1029

SUPREME COURT OF THE UNITED STATES.

No. 140.

PAUL DILLINGHAM, PLAINTIFF IN ERROR,

vs.

LUCIUS G. FISHER.

IN ERROR TO THE SUPREME COURT OF THE STATE OF WISCONSIN.

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GIDEON, Print.

The return to the within writ of error appears by the schedule hereto annexed.

The return of the supreme court of the State of Wisconsin.

LA FAYETTE KELLOGG, *Clerk*.

Writ of Error.

UNITED STATES OF AMERICA, *ss:*

[SEAL.] The President of the United States to the honorable the Judges of the supreme court of the State of Wisconsin, greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said supreme court of the State of Wisconsin, before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Paul Dillingham, plaintiff in error, and Lucius G. Fisher, defendant in error, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty, or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption, specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said Paul Dillingham, plaintiff in error, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the first Monday of December next, in the said Supreme Court to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct

that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the honorable Roger B. Taney, Chief Justice of the said Supreme Court, the sixth day of July, in the year of our Lord one thousand eight hundred and fifty-seven, and of the independence of the United States the eighty-first.

WM. THOS. CARROLL,
Clerk of the Supreme Court of the United States.

Allowed by

R. B. TANEY, *Chief Justice*
Of the Supreme Court of the United States.

Washington, July 6, 1857.

Filed August 4th, 1857.

LA FAYETTE KELLOGG,
Clerk Sup. Court, Wisconsin.

Citation, with Service.

The United States of America to Lucius G. Fisher, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the first Monday of December next, pursuant to a writ of error filed in the clerk's office of the supreme court of the State of Wisconsin, wherein Paul Dillingham is plaintiff in error, and you, the said Lucius G. Fisher, are defendant in error, to show cause, if any there be, why a judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the honorable Roger B. Taney, Chief Justice of the Supreme Court of the United States, this sixth day of July, in the year of our Lord one thousand eight hundred and fifty-seven.

R. B. TANEY, *Chief Justice*
Of the Supreme Court of the United States.

Washington, July 6, 1857.

District of Wisconsin,
State of Wisconsin, Rock County, ss:

On this 8th day of August, in the year of our Lord one thousand eight hundred and fifty-seven, personally appeared Matthew H. Carpenter, before me, the subscriber, a commissioner duly appointed by the district court of the United States for said district, and makes oath that he delivered a true copy of the within citation to Lucius G. Fisher, at Beloit, in said district of Wisconsin, on the said 8th day of August, A. D. 1857, this day; and that the admission of service hereon was signed by said Lucius G. Fisher in his

said Carpenter's presence the day and year last above written, and that he, said Carpenter, then and there exhibited to said Fisher the within original citation.

W. C. SPALDING,
Commissioner, &c.

I admit service on me this 8th day of August, A. D. 1857, of a true copy of the within citation, and that the within original was at the same time exhibited to me, by Mat. H. Carpenter, on behalf of said plaintiff in error.

August 8th, A. D. 1857. L. G. FISHER.

Copy of Bond.

Know all men by these presents, that we, Mat. H. Carpenter as principal, and Hazen Cheney and B. E. Hale as sureties, are held and firmly bound unto Lucius G. Fisher, in the full and just sum of five hundred dollars, to be paid to the said Lucius G. Fisher or his certain attorney, executors, administrators, or assigns; to which payment well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents. Sealed with our seals, and dated this 13th day of June, in the year of our Lord one thousand eight hundred and fifty-seven.

Whereas lately, at a term of the supreme court of the State of Wisconsin, in a suit depending in said court between Paul Dillingham, plaintiff in error, and Lucius G. Fisher, defendant in error, judgment was rendered against the said Paul Dillingham, and the said Paul Dillingham having obtained writ of error, and filed a copy thereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Lucius G. Fisher, him said Lucius G. Fisher citing and admonishing to be and appear at a Supreme Court of the United States, to be holden at Washington, the first Monday of December next:

Now, the condition of the above obligation is such, that if the said Paul Dillingham shall prosecute his writ of error to effect, and answer all damages and costs if he fail to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

MAT. H. CARPENTER, [SEAL.]
HAZEN CHENEY, [SEAL.]
B. E. HALE. [SEAL.]

Sealed and delivered in presence of—
CHARLES NORTON.

Approved by R. B. TANEY,
Chief Justice of the Sup. Ct. of the U. States.

Filed Aug. 4th, 1857.

L. F. KELLOGG,
Clerk S. C.

Pleas before the supreme court of the State of Wisconsin, at a term thereof, begun and held at the capitol, in the city of Madison, the seat of government of said State, on the second Tuesday of December, in the year of our Lord one thousand eight hundred and fifty-six.

Present, the Hon. Edward V. Whiton, chief justice, and the Hon. Abram D. Smith and the Hon. Orsamus Cole, associate justices of said court.

LA FAYETTE KELLOGG, *Clerk*.

Be it remembered, that heretofore, to wit, on the third day of June, in the year of our Lord one thousand eight hundred and fifty-six, came into the office of the clerk of the supreme court of the said State of Wisconsin Paul Dillingham, by Edward G. Ryan, esq., his attorney, and filed in the office of the said clerk his certain writ of error, and transcript of the record and proceedings of the circuit court of Rock county, in said State, in return to said writ of error, in a certain cause duly tried in said circuit court, between Paul Dillingham, plaintiff, and Lucius G. Fisher, defendant, in an action of ejectment, which said writ of error and transcript are in the words and figures following, to wit:

Writ of Error.

STATE OF WINCONSIN,
Supreme Court, ss.

The State of Wisconsin to the Judge of the Circuit Court of the county of Rock, in said State, greeting:

Because in the record and proceedings, and also in the rendition of judgment, in a suit which was duly tried in the circuit court for Rock county aforesaid, before you, between Paul Dillingham, plaintiff, and Lucius G. Fisher, defendant, in an action of ejectment, manifest error hath intervened, to the great damage of the said Paul Dillingham, as by his complaint we are informed:

And we being willing that the error, if any there be, should in due manner be corrected, and full and speedy justice done to the parties aforesaid, do command you that if judgment be thereupon given, then you send to the judge of our supreme court of the State of Winconsin, distinctly and openly, under your seal, with all convenient despatch, a transcript of the record and proceedings of the suit aforesaid, with all things concerning the same, and this writ, so that they may have the same at the next term of our said supreme court, to be held at Madison, in the State aforesaid, on the second Tuesday in June, anno Domini one thousand eight hundred and fifty-six, that the record and proceedings aforesaid being inspected, we may cause to be further done, for correcting

that error, what of right and according to law and the rules of our said court ought to be done,

Witness the Hon. Edward V. Whiton, chief justice of the supreme court of the State of Wisconsin, at Madison, this 1st day of May, A. D. 1856.

[L. S.]

Attest: LA FAYETTE KELLOGG,
Clerk.

EDWARD G. RYAN,
Att'y for Pl'ff in Error.

Transcript in Return to Writ of Error.

Pleas of the special term of the circuit court of Rock county, held at the court-house in Janesville city, in said county, on the 26th day of November, A. D. 1856; present, James R. Doolittle, judge.

Circuit Court for Rock county—of the first day of January, A. D. 1856.

ROCK COUNTY, *ss.*

Paul Dillingham, of Waterbury, in the State of Vermont, plaintiff, in his own proper person comes here into the said court, and complains against Lucius G. Fisher, of Beloit, in the State of Wisconsin, defendant, of a plea, for that whereas the said plaintiff heretofore, to wit, on the first day of December, in the year of our Lord one thousand eight hundred and fifty-five, was possessed of the following described real estate in Beloit, in Rock county, Wisconsin, described as follows, viz: lots 1 and 2, one and two, in block 51, fifty-one, in the town of Beloit, according to the survey and plat of said town by Oliver P. Rice, deputy county surveyor of said county, being part of the southeast fractional quarter of fractional section 35, town. 1 north, of range twelve east, of great value, to wit, of the value of six thousand dollars, which said premises the said plaintiff claims in fee, and he, the said plaintiff, being so possessed thereof, the said defendant afterwards, to wit, on the 10th day of December, in the year of our Lord one thousand eight hundred and fifty-five, entered into the said premises and ejected the said plaintiff therefrom, and now unjustly and unlawfully withholds from the said plaintiff the possession thereof, to the damage of the said plaintiff of six thousand dollars, and therefore he brings suit.

PAUL DILLINGHAM,
Pl'ff, in propria persona.

To Lucius G. Fisher, defendant: You are hereby notified that the declaration, with a copy whereof you are now herewith served, and to which copy this notice is subjoined, will be filed in the office of the clerk of said court, in the city of Janesville, on the first

Monday of January, A. D. 1856. That, upon filing the same, a rule will be entered requiring you to appear and plead to the said declaration within twenty days after the entry of such rule; and that if you neglect so to appear, a judgment by default will be entered against you, and the plaintiff will recover possession of the premises specified in the declaration.

Dated this 1st day of January, A. D. 1856.

Yours, &c.,

PAUL DILLINGHAM,
Plaintiff, pro. per.

The above declaration and notice were filed the 7th day of January, A. D. 1856.

Circuit Court for Rock County.

PAUL DILLINGHAM
vs.
LUCIUS G. FISHER. } Ejectment.

The plaintiff's declaration having been this day filed, and an affidavit of service of said declaration and the proper notice, as required by law, having been read and filed, on motion of the plaintiff, ordered that the said defendant appear and plead to said declaration within twenty days from this day, or his default will be entered and judgment, &c.

Dated this 1st Monday of January, 1856.

PAUL DILLINGHAM,
Plaintiff, pro. per.

The above order was duly entered in the minutes kept by the clerk of said court in the common rule-book, kept in his office, on the 1st Monday of January, A. D. 1856.

Plea.

ROCK COUNTY, *ss.*

Circuit Court for said County.

PAUL DILLINGHAM
vs.
LUCIUS G. FISHER. } Ejectment.

And here in court comes the said Lucius G. Fisher, in propria persona, and defends the force and injury, when, &c., and says, that he is not guilty of unlawfully withholding the premises claimed by the said plaintiff and particularly described in the declaration, as the said plaintiff hath alleged thereof against him, in said decla-

ration; and of this he, the said defendant, puts himself upon the country for trial, and the plaintiff doth the like.

LUCIUS G. FISHER,
Defendant, pro. se.

The above plea was filed the 15th day of January, A. D. 1856.

Rock Circuit Court.

PAUL DILLINGHAM vs. LUCIUS G. FISHER. } Ejectment.

And afterwards, to wit, at the term of the said circuit court, begun and holden at the court-house in the city of Janesville, in and for said county, on the 26th day of February, A. D. 1856, as yet of said term, in open court, on same day.

Present, Hon. James R. Doolittle, judge.

The above entitled cause came on to be tried, and the issue therein joined was then and there tried by a jury, and evidence was introduced by both parties; and the jury having considered of their verdict, returned into court and rendered their verdict that the said defendant was not guilty in manner and form as was in the said declaration alleged.

Whereupon it is by the court here, this 26th day of February, A. D. 1856, as yet of the said term, ordered, adjudged and determined that the said defendant do have and recover of the said plaintiff the said defendant's costs, in and about this suit expended, taxed at ten dollars and ten cents, and have execution, &c.

The above judgment was rendered by said court, and duly and regularly entered, docketed and recorded on the 26th day of February, A. D. 1856. And afterwards, to wit, on the 26th day of February, A. D. 1856, the said plaintiff filed his bill of exceptions, settled according to the course of practice in said court, which said bill of exceptions is in the words following, to wit:

Exceptions.

Circuit Court for Rock County.

Of the special term of said circuit court, held at the court-house, in Janesville city, in the said county, on the 26th day of Feb'y, A. D. 1856. Present, Hon. J. R. Doolittle, judge.

PAUL DILLINGHAM vs. LUCIUS G. FISHER. } Ejectment.

And afterwards, to wit, on the 26th day of February, A. D. 1856, as yet of the said term, the above entitled cause came on to be tried, and then and there was tried by a jury of the proper

county, and the plaintiff, to prove the issue on his part, read and gave in evidence to the jury the following stipulation, that is to say:

Rock County Circuit Court.

PAUL DILLINGHAM vs. LUCIUS G. FISHER. } Ejectment.

Stipulation No. 1.

In this cause the respective parties thereto stipulate and agree to the following facts, to be considered as proven and established by unexceptionable, legal, and sufficient evidence, on the trial of the issue joined in said cause, that is to say:

That on the 16th day of November, A. D. 1838, Robert P. Crane pre-empted the southeast fractional quarter of fractional section 35, in town. 1 north, of range twelve east, in said Rock county, in due form of law, under and according to the provisions of the pre-emption law of the United States, of June 22d, A. D. 1838, he, the said Robert P. Crane, then and there making the proof required by said act, and paying the price for said land, by said act required; and he, the said Robert P. Crane, then and there receiving from the receiver of the proper land office a receipt or certificate of purchase of and for the said land, in due form of law, which said receipt or certificate of purchase the said Crane has ever since held and now holds, being chapter 119 of the laws passed and enacted by the Congress of the United States, in A. D. 1838, and that the patent therefor issued in due form of law, from the United States to the said Robert P. Crane, on the 9th day of May, A. D. 1842, and not before.

That the said Robert P. Crane conveyed said land by proper deed to Samuel B. Cooper, on the 22d day of January, A. D. 1855; and that the said Cooper afterwards conveyed the same to one Jared S. Demmon; and that afterwards, to wit, on the 23d day of April, A. D. 1855, the said Jared S. Demmon conveyed the same to the plaintiff; all of which conveyances are in due form, by properly executed, witnessed, acknowledged and recorded deeds of gift and grant, for valuable consideration, which patent and deeds show a connected chain of title from the United States to the plaintiff, of the land hereinbefore described.

That the land described in the declaration is part and parcel of the said fractional quarter section, hereinbefore and first described; was at the time of the commencement of this suit, and still is, in the possession of the defendant, and of the value of six thousand dollars. Dated February 22d, A. D. 1856.

PAUL DILLINGHAM, *Plaintiff*.
LUCIUS G. FISHER, *Defendant*.

And the said plaintiff then rested his case.

The defendant then offered to read to the jury as evidence in his behalf the following stipulation; that is to say:

Circuit Court for Rock County.

PAUL DILLINGHAM } vs. } Ejectment.
LUCIUS G. FISHER. }

Stipulation No. 2.

The parties to this cause respectively stipulate and hereby admit to be considered as established on the trial of the issue in this cause—(subject, however, to the plaintiff's objection on the trial that the said facts herein admitted are not legal, competent, and material to the issue, and proper to be given in evidence)—

That the said Crane, subsequent to the 16th day of November, A. D. 1838, but before the issuance of the patent to him from the United States on his pre-emption, as stated in stipulation number one, made and delivered to one Kearney a proper deed of gift and grant, in and by which said deed the said Crane expressed that he did give and grant unto the said Kearney the land described in the said declaration, and that the said Kearney subsequently conveyed the same to the said defendant for valuable consideration; that the said conveyances from Crane to Kearney, and from Kearney to the defendant, were in proper and legal form, by deeds properly executed, witnessed, acknowledged, and recorded, and convey to the defendant the title to said premises, provided the deed from said Crane to said Kearney was not void in law.

The effect of this stipulation is this: The defendant on the trial may offer to prove the facts herein stipulated and admitted, and the plaintiff shall and may take every possible objection to the introduction of evidence tending to show said facts; but if the court holds and decides that said facts are legally competent, then and in that case this stipulation may be read as evidence of said facts.

PAUL DILLINGHAM, *Plaintiff*.
LUCIUS G. FISHER, *Defendant*.

Dated February 22d, A. D. 1856.

To the introduction of this stipulation in evidence the said plaintiff in proper person objected, but the court overruled said objection, and the said plaintiff then and there excepted to the ruling and decision of the court in admitting said stipulation to be read in evidence; and the said stipulation was then and there read in full to the jury.

And the said defendant then rested his case.

The plaintiff then requested the judge of said court to instruct and charge the jury:

1. That the plaintiff had given and established in evidence a prima facie case, and on his own testimony was entitled to a verdict.

This instruction was given by said judge in charge to said jury without objection and without exception.

The plaintiff also requested the said judge of said court to instruct and charge the jury further, as follows:

2. That the deed from Robert P. Crane to said Kearney, in and by which the said Robert P. Crane expressed that he did give and grant unto the said Kearney the land described in the said declaration, having been made and delivered to said Kearney by said Robert P. Crane, as a transfer and assignment of land to which the said Crane (when said deed was so made and delivered to said Kearney) had only a pre-emption right, under the pre-emption law aforesaid, and before the issuance of the patent to said Crane for said land, under the pre-emption law of 1838, specified in the stipulation read in evidence, was absolutely void as a transfer or assignment, or conveyance to said Kearney, of the said land therein described, and passed to said Kearney no right or title in or to said land.

But the judge of said court, pro forma, and with the understanding that this cause was to be carried to the Supreme Court, refused to give said last mentioned charge to said jury; and the said plaintiff did then and there except to said refusal of said judge.

And the said plaintiff further requested the judge of said court to instruct and charge the jury—

3. That the deed specified in the second stipulation read in evidence, from said Robert P. Crane to said Kearney, in and by which said deed the said Crane did express that he did thereby give and grant unto the said Kearney the said land in the said declaration mentioned, was for the reason that it was intended as and purported to be a transfer and conveyance of land to which the said Crane then had only a pre-emption right, under the pre-emption act of 1838, specified in the stipulation, and having been made and delivered to said Kearney previous to the issuance of the patent for said land to said Crane under said act of 1838, was, by the said act specified as aforesaid, absolutely null and void as a conveyance or transfer of said land. But the said judge ruled pro forma, that said last mentioned instruction should not be given to said jury, and then and there refused to give it to the said jury; to which decision and refusal of said judge the said plaintiff did then and there except.

And the said judge did then and there instruct and charge the said jury that the said deed from said Crane to said Kearney was, notwithstanding the provisions of said pre-emption law of 1838, specified in the stipulations read in evidence, valid and effectual as a transfer and conveyance of said land to said Kearney; to which last ruling and instruction of said judge to said jury the said plaintiff did then and there except.

Whereupon the said jury rendered a verdict of not guilty, in favor of the defendant.

And because none of these matters appear of record in said cause, the judge of said court has settled, signed, and sealed this bill of exceptions, this 26th day of February, A. D. 1856, in open court.

J. R. DOOLITTLE, [L. S.]
Judge of said court.

STATE OF WISCONSIN,
Rock County, ss.

I, Edward P. King, clerk of the circuit court within and for the said county of Rock, hereby certify that the writ of error was served on me from the Supreme Court in the case Paul Dillingham, plaintiff in error, vs. Lucius G. Fisher, defendant in error, on the 1st day of May, A. D. 1856; and I hereby return to said writ, and certify that the foregoing is a true and literal transcript of all the papers, pleadings, and proceedings, and of the bill of exceptions in the cause in which the judgment mentioned in said writ of error was rendered. I hereby further certify, that I have compared all the foregoing return and copies with the originals on file and of record in my office, and that they are true and literal copies and transcripts of the same.

In testimony whereof, I hereto set my hand and affix the seal of said court, at Janesville city, in said county, this 30th day of May, A. D. 1856. [L. S.]

E. P. KING, *Clerk.*
By JOHN NICHOLS,
Deputy.

Memo.

And afterwards, to wit, on the third day of June, in the year of our Lord one thousand eight hundred and fifty-six, the said Paul Dillingham, by his attorney aforesaid, filed in the clerk's office aforesaid his certain notice of argument, in the words and figures following, to wit:

Notice of Argument.

In Supreme Court.—Error to Rock County, 1st judicial circuit.

PAUL DILLINGHAM, Pl'ff in Error,
vs.
LUCIUS G. FISHER, Def't in Error.

To LUCIUS G. FISHER, *Defendant in Error.*

SIR: Please take notice, that the above entitled cause will be brought on to and for argument on the first day of the next term

of said court, to be holden at the capitol, in Madison, in the State of Wisconsin, on the third Tuesday of June, A. D. 1856, being the regular next term, or as soon thereafter as counsel can be heard.

EDWARD G. RYAN,
Att'y for Pl'ff in Error.

May 31, 1856.

Memo.

And afterwards, to wit, at the June term of said supreme court, begun and held at the capitol, in the city of Madison, the seat of government of said State, on the third Tuesday in June, in the year last aforesaid, on the fifteenth day of the term, to wit, on the 1st day of July, A. D. 1856, the following proceedings were had in said cause, to wit:

Record.

Rock Circuit Court.

PAUL DILLINGHAM, Pl'ff in Error,
vs.
LUCIUS G. FISHER, Def't in Error.

Ordered, that this cause be continued until the next term of this court.

Memo.

And afterwards, to wit, at the same term of said court, on the twenty-first day of the term, to wit, on the seventh day of July, A. D. 1856, the following further proceedings were had in said cause, to wit:

Record.

Rock Circuit Court.

PAUL DILLINGHAM, Pl'ff in Error,
vs.
LUCIUS G. FISHER, Def't in Error.

And now at this day came the parties herein, by their attorneys, and by the agreement of the said parties, by their attorneys, the order of continuance entered herein at a previous day of this term is vacated and set aside.

And thereupon this cause was submitted to the court, on printed case and brief; and the court, not being now sufficiently advised of and concerning its decision herein, took time to consider of its opinion.

Memo.

And afterwards, to wit, at the same term of said court, on the fiftieth day of the term, to wit, on the twentieth day of September, A. D. 1856, the following further proceedings were had in this cause, to wit:

Record.

Rock Circuit Court.

PAUL DILLINGHAM, Pl'ff in Error,
vs.
LUCIUS G. FISHER, Def't in Error.

Ordered, that this cause be continued until the next term of this court, for re-argument.

Memo.

And afterwards, to wit, on the fifth day of November, in the year of our Lord one thousand eight hundred and fifty-six, the said Paul Dillingham, by his attorney aforesaid, filed in the clerk's office aforesaid his certain notice of argument, in the words and figures following, to wit:

Notice of Argument.

In Supreme Court.—Error to Rock Circuit Court, 1st judicial circuit.

PAUL DILLINGHAM, Pl'ff in Error,
vs.
LUCIUS G. FISHER, Defendant in Error.

To Hon. JAMES R. DOOLITTLE,
Attorney for Defendant in Error.

SIR: You will please take notice, that this cause will be brought on for argument, and will be argued, and no mistake, on the opening of the next regular term of said court, at the capitol, in Madison, on the second Tuesday of December next, or as soon thereafter as counsel can be heard.

Truly yours,
EDWARD G. RYAN,
Attorney for Plaintiff in Error.

Dated Nov. 3d, 1856.

Memo.

And afterwards, to wit, at the December term of said supreme court, begun and held at the capitol, in the city of Madison, the seat of government of said State, on the second Tuesday of December, in the year of our Lord one thousand eight hundred and fifty-

six, on the fifteenth day of the term, to wit, on the seventh day of January, A. D. 1857, the following proceedings were had in said cause, to wit:

Record.

Rock Circuit Court.

PAUL DILLINGHAM, Pl'ff in Error,
vs.
LUCIUS G. FISHER, Def't in Error.

And now at this day came the parties herein by their attorneys, and the argument of this cause having been commenced by Messrs. Ryan and Carpenter for the said plaintiff in error, and by J. R. Doolittle, esq., for the said defendant in error, and there not being now sufficient time to complete the same, this cause is continued for further argument.

Memo.

And afterwards, to wit, at the same term of said court, on the sixteenth day of the term, to wit, on the eighth day of January, A. D. 1857, the following further proceedings were had in said cause, to wit:

Record.

Rock Circuit Court.

PAUL DILLINGHAM, Pl'ff in Error,
vs.
LUCIUS G. FISHER, Def't in Error.

And now at this day came the parties herein by their attorneys aforesaid, and the argument of this cause having been resumed and completed, and the cause submitted, and the court not being now sufficiently advised of and concerning its decision herein, took time to consider of its opinion.

Memo.

And afterwards, to wit, at the same term of said court, on the fifty-sixth day of the term, to wit, on the twenty-ninth day of April, A. D. 1857, the following further proceedings were had in said cause, to wit:

Record.

Rock Circuit Court.—Opinion by Jus. Cole.

PAUL DILLINGHAM, Pl'ff in Error,
vs.
LUCIUS G. FISHER, Def't in Error.

This cause came on to be heard on the transcript of the record from the circuit court of Rock county, and was argued by counsel.

On consideration whereof, it is by the court now here considered, ordered and adjudged, that the judgment of the circuit court of Rock county in this cause be, and the same is hereby affirmed, with costs to be taxed against the said plaintiff in error.

STATE OF WISCONSIN,
Supreme Court, ss.

I, La Fayette Kellogg, clerk of the supreme court of the State of Wisconsin, do hereby certify, that the above and foregoing is a true and correct transcript of all the record and proceedings in a certain cause lately determined in said supreme court, in which Paul Dillingham was plaintiff in error, and Lucius G. Fisher was defendant in error; that I have compared the same with the original record and proceedings on file in my office, and that it is a true transcript thereof, and of the whole of such originals.

In testimony whereof, I have hereunto set my hand and
[L. S.] affixed the seal of said court, at Madison, this 10th day of August, A. D. 1857.

LA FAYETTE KELLOGG,
Clerk of Sup. Court Wisconsin.

Clerk's fees, $9 75.

Filed 26 Aug., 1857.

1038.

SUPREME COURT OF THE UNITED STATES.

No. 141.

THE UNITED STATES, APPELLANTS,

vs.

JOSE JOAQUIN ESTUDILLO.

APPEAL FROM THE DISTRICT COURT U. S. FOR THE NORTHERN DISTRICT OF CALIFORNIA.

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Transcript of the proceedings in case No. 256, José Joaquin Estudillo, claimant, vs. the United States, defendant, for the place named "San Leandro."

OFFICE OF THE BOARD OF COMMISSIONERS
To ascertain and settle the private land claims in the State of Cal'a.

Be it remembered, that on this thirty-first day of May, anno Domini one thousand eight hundred and fifty-two, before *before* the commissioners to ascertain and settle the private land claims in the State of California, sitting as a board in the city of San Francisco, in the State of California aforesaid, in the United States of America, the following proceedings were had, to wit:

The petition of José Joaquin Estudillo, for the place named "San Leandro," was presented, and ordered to be filed and docketed with No. 256, and is as follows, to wit:

(Vide page 5 of this Transcript.)

Upon which petition the following subsequent proceedings were had, in their chronological order, to wit:

SAN FRANCISCO, *February 4th*, 1853.

In case No. 256, José Joaquin Estudillo, for the place named "San Leandro," the deposition of José Martinez, a witness in behalf of the claimant, taken before Commissioner Hiland Hall, was filed.

(Vide page 10 of this Transcript.)

In the same case the deposition of José Castro, a witness in behalf of the claimant, taken before Commissioner Hiland Hall, with document marked H H No. 1 annexed thereto, was filed.

(Vide page 6 of this Transcript.)

SAN FRANCISCO, *Aug. 27th*, 1853.

In the same case the deposition of Vicente Peralta, a witness in behalf of the claimant, taken before Commissioner Thompson Campbell, was filed.

(Vide page 13 of this Transcript.)

SAN FRANCISCO, *September* 28, 1853.

In the same case the counsel for the claimant filed the stipulation, to wit:

(Vide page 54 of this Transcript.)

In the same case, on motion of counsel for the claimant, the following order was made, to wit:

(Vide page 53 of this Transcript.)

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(Vide page 54 of this Transcript.)

In the same case, on motion of counsel for the claimant, the following order was made, to wit:

(Vide page 53 of this Transcript.)

SAN FRANCISCO, *October* 18, 1853.

In the same case the counsel for the claimant filed the following affidavit, to wit:

(Vide page 55 of this Transcript.)

SAN FRANCISCO, *Nov.* 11*th*, 1853.

In the same case the deposition of Juan B. Alvarado, a witness in behalf of the claimant, taken before Commissioner Alpheus Felch, with documents marked Nos. 1 and 2 A. F. annexed thereto, was filed.

(Vide page 15 of this Transcript.)

SAN FRANCISCO, *February* 15, 1854.

In the same case the deposition of Juan B. Alvarado, a witness in behalf of the claimant, taken before Commissioner Alpheus Felch, was filed, to wit:

(Vide page 19 of this Transcript.)

SAN FRANCISCO, *May* 18*th*, 1854.

In the same case the deposition of Franklin M. Wray, a witness in behalf of the United States, taken before Commissioner Peter Lott, was filed.

(Vide page 22 of this Transcript.)

SAN FRANCISCO, *June* 29*th*, 1854.

In the same case the deposition of John S. Chipman, a witness in behalf of the United States, taken before Commissioner Peter Lott, with documents marked Exhibit Nos. 1, 2, P. L., annexed thereto, was filed.

(Vide page 26 of this Transcript.)

SAN FRANCISCO, *October* 6*th*, 1854.

In the same case the depositions of Aaron F. Dyon and John C. Pelton, witnesses in behalf of the United States, taken before Commissioner Peter Lott, was filed.

(Vide pages 34 and 32 of this Transcript.)

SAN FRANCISCO, *November* 28*th*, 1854.

Case No. 256, on motion of the counsel for the claimant, with the consent of the United States law agent, was ordered to be placed at the foot of the 3d class cases on the trial docket.

SAN FRANCISCO, *December* 11*th*, 1854.

In the same case the depositions of José Castro and James F. Stratton, witnesses *witnesses* in behalf of the claimant, taken before Commissioner Alpheus Felch, was filed.

(Vide pages 38 and 36 of this Transcript.)

SAN FRANCISCO, *Dec.* 19*th*, 1854.

Case No. 256 was submitted on brief and taken under advisement by the board.

In the same case the counsel for the claimant filed an authenticated copy of the will of José Joaquin Estudillo, also a fac simile copy of the expediente, as evidence in this case, which are in the words and figures as follows, to wit:

(Vide pages 43 and 71 of this Transcript.)

SAN FRANCISCO, *Jan.* 3, 1855.

In the same case the counsel for the claimant filed the following stipulation, to wit:

(Vide page 69 of this Transcript.)

SAN FRANCISCO, *January* 9, 1855.

In the same case Commissioner Alpheus Felch delivered the opinion of the board, confirming the claim.

(Vide page 91 of this Transcript.)

And the following order was made, to wit:

(Vide page 102 of this Transcript.)

SAN FRANCISCO, *January* 30, 1855.

In the same case the United States law agent filed the following petition, to wit:

(Vide page 90 of this Transcript.)

SAN , *February* 13, 1855.

In the same case Commissioner Alpheus Felch delivered the decision of the board upon the petition of the United States law agent, filed heretofore, to wit, on the 30th January last, denying the same.

Petition.

To the U. S. Land Commissioners to ascertain and settle the private land claims in the State of California.

Claim of José Joaquin Estudillo for the land known as San Leandro.

Petitioner, a Mexican by birth, respectfully represents, that on the 8th day of January, 1837, for the benefit of himself and family, he petitioned the constitutional governor of the department of California, according to law, for a grant of the tract of land situate in said department and known as arroyo de San Leandro, which said petition was lost or mislaid in the office of the government secretary; that in consequence of said loss your petitioner afterwards, on the 28th day of June, 1842, renewed his said petition according to law for said grant of said loss to the governor, as aforesaid, of said department, and at the *shut* time Juan B. Alvarado, on the 16th day October, 1842, received a grant of a part of said tract of land made according to law by said governor, which said part is described in said grant as follows:

A part of the tract of land known by the name of San Leandro, bounded northerly with the creek of San Leandro, easterly with the

springs from the springs on the lands occupied by Indians, that are at the present time established there; from this point running a straight line on the south bordering up to the creek of San (Leandro) Lorenzo, we think embracing the lands cultivated by said Indians, and westerly with the *see*, containing one league, (the sito de ganado mayor,) more or less. That the said portions of said land contained within said boundaries, and actually occupied and cultivated by said Indians, was very inconsiderable, not exceeding three acres, and that said Indians have long since abandoned the same, and *and* now occupy, with the consent of petitioner, another portion of the land granted as aforesaid to petitioner.

Petitioner further represents that he has carried out and performed the terms and conditions of said grant, and has complied with the laws in relation to said grant.

That in consequence of the loss of his said first mentioned petition he received an official permit to settle and occupy said land on the 16th day of August, 1839, and has occupied and possessed the same ever since as the lawful owner thereof.

Copies and translations of said petitions, grant and permit, are herewith filed.

Wherefore petitioner prays that said land may be confirmed to him as granted.

SAUNDERS, HEPBURN & BAILY,
For Petitioner.

Filed in office May 31st, 1852.
(Signed) GEO. FISHER, *Sect'y.*

Deposition of José Castro.

SAN FRANCISCO, *Feb'y* 4, 1853.

On this day, before Commissioner Hiland Hall, came José Castro, a witness in behalf of the claimant, José Joaquin Estudillo, petition No. 256, and was duly sworn, his evidence being interpreted by the secretary.

The U. S. associate law agent was present.

In answer to inquiries by counsel for the clamant, the witness testified as follows:

My name is José Castro; my age is forty-four years, and I reside at Monterey; I am a native of California, and have always resided here.

I have, at different times, had the several offices of member of the territorial deputation, prefect, political chief and military comandante.

I am acquainted with the rancho called San Leandro; it is situated opposite this city, in Contra Costa county; I have known the ranch from about the year 1832.

I was acquainted with José Joaquin Estudillo; he lived on the said ranch from about the year 1832, until his death. He occupied the land 1838; I mean to say I passed by the land as early as 1832; I knew it at that time, and that he occupied it as early as 1838.

A paper is now shown me *pro*porting to be a map or plan of the land, which is hereto annexed and marked H H No. 1.

Said Estudillo and Guillermo Castro both applied to Governor Alvarado for the same land, and the controversy was referred to me by the governor as prefect, and I fixed the boundary line and marked it on the said map or plan, and wrote on the line the words "Lino diversoria," per V. José Castro; the land of Estudillo being towards the bay, and Castro's towards the mountains.

The lands asked for by the said parties interfered with other, and I was called upon to determine the boundaries, and did so, as before stated.

The map is a representation of the ranch called San Leandro.

It was usual for such cases to be referred by the governor to the prefect, and for him to act upon them; Estudillo and Castro *was* both present, and I took information from others acquainted with the lands, and decided upon the matter verbally, and in obedience to instructions from the governor. I informed them that if they did not abide by the decision they would forfeit their claims, and the land would remain vacant.

In 1838 there was a small Indian habitation on the land, and the governor told me they might remain on the land. It was near the main road, on the side next the hills. The Indians had small patches under cutivation near the house.

In answer to inquiries by the associate law agent, the witness says he does not know anything about the line which crosses the dividing line on the map before mentioned, nor of the continuation of said cross line in another direction.

I do not know which of the grants, Castro's or Estudillo's, were first made by the governor. I think my decision was about the year 1840 or 1841; it was before the grants were made.

JOSE CAS'TRO.

Sworn and subscribed before me.

HILAND HALL, *Com'r.*

It is agreed that the above deposition may be read in evidence, subject to all legal objections to questions and answers, the same as if they had been reserved at the taking of the deposition.

Sept. 26, 1853.

V. E. HOWARD,
U. S. L. Agent.

Filed in office Feb'y 4, 1853.
(Signed) GEO. FISHER, *Sec'y.*

Deposition of José Martinez.

SAN FRANCISCO, *Feb'y* 4, 1853.

On this day, before Com'r Hiland Hall, came José Martinez, a witness in behalf of the claimant, José Joaquin Estudillo, petition No. 256, and was duly sworn, his evidence being interpreted by the secretary.

The U. S. associate law agent was present.

In answer to questions by counsel for the claimant the witness testified as follows:

My name is José Martinez; my age is thirty-eight years, and I reside in Contra Costa county; I have resided there since the year 1830; I am acquainted with the rancho San Leandro, and have known it from the year 1829. It was, at first, land on which the cattle of the mission of San José ranged, and in 1836 it was occupied by Estudillo, and he has occupied it since.

In 1837 he built a house on the land and occupied it with his family, and continued to occupy it until his death, which was *was* the 7th of June, 1852; his family has occupied it to the present time.

A portion of the land has been cultivated since the latter part of the year 1836, and it also has been used for the pasture of stock.

I am acquainted with the location of the land. A paper is shown me, being an official copy from the office of surveyor general, being Exhibit A, filed in the case; the map represents the land; a line connecting at San Leandro creek, at the laguna as marked on the map, and running on the summit of the range of hills to the creek of San Lorenzo, is the dividing line between Estudillo and Castro.

All the land between the two creeks down to the bay is considered as belonging to the ranch of Estudillo.

Estudillo and his family have occupied the ranch as I have thus described it. At first he built a house and occupied it near the San Leandro, and *and* towards the lower part of the land.

Then he built another house about a mile up the creek. Afterwards, when these lands were exhausted, he cultivated other lands on the Lorenzo, towards the upper part of the ranch, and built a house there for his servants.

In 1842 there was a small Indian house on the left-hand side of the road leading from San Leandro to San José, on the hill.

There were of all ages about ten Indians in number; they cultivated small patches of ground near the house for corn and melons; the house is correctly represented on the map and designated "Silveston," near which was springs.

Estudillo was a married man, and left at his decease nine children. Their names were Maria Conception, married to John B. Ward; José Ramon; Maria de Jesus, married to Wm. H. Davis; José Antonio, José Vicente, Louis Antonio, Maria Dolores, Madalina, and Jesus Maria. The wife of Estudillo survived her husband and is living; her maiden name was Maria Juana Martinez.

A tract of land, three hundred varas in length and one hundred in width, would embrace all the patches occupied by the Indians. Besides this they occupied a house on the hill, as before stated.

JOSE DE JESUS MARTINEZ.

Sworn and subscribed before me,

HILAND HALL, *Com'r.*

It is agreed that the above deposition may be read, reserving to the government the right to object to the competency of same as to a question of boundary.

Sept. 26, 1853.

V. E. HOWARD, *U. S. L. Agent.*

Filed in office Feb. 4, 1853.

(Signed) GEO. FISHER, *Sec'y.*

Deposition of Vicente Peralta.

OFFICE OF COMMISSIONERS OF LAND CLAIMS IN CALIFORNIA,
San Francisco.

This day, before Commissioner Thompson Campbell, came Vicente Peralta, a witness in behalf of the United States, in case of José Joaquin Estudillo, No. 255, who, after being duly sworn, deposes as follows:

[This evidence was given in the Spanish language, and interpreted by the secretary, counsel for claimant being present.]

What is your name, age, and place of residence?

My name is Vicente Peralta; I am forty-one years of age, and reside in Contra Costa.

Were you acquainted with the (linus) limits of the mission of San José in the year 1842? if so, please describe them.

I know part of them; they are from the mouth of the San Leandro creek, along the bay of San Francisco, to the Agua Caliente, a place well known on the rancho of Furgincio Herguna.

How far up the creek from its mouth did the lands of the mission extend?

I believe it had no limits; I think it extended to the top of the mountains.

How far southward along the coast of the bay did the said lands extend from the San Leandro?

I don't know the distance, but they extended from San Leandro to the Agua Caliente.

How far is the Agua Caliente from the shore of the bay?

It is one league.

What distance do you suppose it is from the San Leandro to the Agua Caliente?

It is about seven or eight leagues.

Is the tract now claimed claimed by the heirs of José Joaquin Estudillo, under the name of San Leandro, included within the limits of the land belonging to the mission of San José, as above described by you?

It is included within the limits of these lands.

Was this land actually occupied in the year 1842 by said mission; and if so, in what way was it occupied?

I do not recollect, but it was the land now belonging and occupied by Guillermo Castro, occupied in 1842 by the said mission. I do not recollect, but it appears to me that it was not.

Was the land now belonging to Barbara Soto occupied in 1842 by the said mission?

I do not recollect, but it appears to me that it was not.

Was it understood in 1842 that the land claimed by the mission of San José could not be granted to individuals?

It was understood that they could be granted.

VICENTE PERALTA.

Sworn and subscribed before me this day, 27 of August, A. D. 1853.

THOMPSON CAMPBELL, *Com'r.*

Filed in office Aug. 27, 1853.

(Signed) GEO. FISHER, *Sec'y.*

Deposition of Juan B. Alvarado.

OFFICE OF THE BOARD OF COMMISSIONERS, *&c. &c.*

This day, before Com'r Alpheus Felch, came Juan B. Alvarado, a witness in behalf of claimant, José J. Estudillo, No. 256, who, after being duly sworn, deposes as follows, the secretary to the board acting as interpreter.

Questions by Judge Thornton, Attorney for Claimants.

1 question. What are your name, age, and place of residence?

Answer. My name is Juan B. Alvarado; my age forty-four years, and I reside in Contra Costa county, California.

2 question. Look at the document now presented to you, *pro*porting to be an order from Manuel Jimeno relative to the occupation of certain lands by Joaquin Estudillo in the place called San Leandro, marked Exhibit No. 1, with the initials A. F., and state whether you know the handwriting of Manuel Jimeno; and if yea, whether his name signed to said document is the genuine signature of said Jimeno?

Answer. I have examined the document; the signature thereto is the true and genuine signature of said Jimeno; I have often seen him write, and know his handwriting.

3 question. Was you acquainted with José Joaquin Estudillo, the grantee of the land claimed in this case? If yea, state what you know about the occupation of said land by him, and by heirs since his death.

Answer. I knew said Estudillo in his lifetime, and know the whole of his family; said Estudillo occupied the land, I believe, prior to 1838, by consent of the governor; afterwards a written permission was granted to him by the government. In 1841, or 1842, a formal title was granted to him by myself, I being at that time governor of California.

Under this grant, he during his lifetime, and his family since his death, have occupied it continually up to this time. They have had houses, corrals, fences, and cattle of all descriptions, and have cultivated the land during the whole of that time. I know that in the year

1842 the family was living there, occupying houses built on the land, and have continued to *rised* there ever since.

4 question. Please look at the document now shown you, purporting to be a traced copy of an expediente from the surveyor general's office marked Exhibit No. 2, with the initials A. F., and annexed to this deposition, and state whether the part of said document purporting to be a grant from yourself as governor of California to José Joaquin Estudillo, is or is not identical in all respects, except the signature, with the title to which you have above stated you executed and gave to said Estudillo?

Answer. I have examined the document; I recollect all the particulars, and this is the title; I know it, because I was very intimate with his family, and all his concessions, and have often examined the paper.

5 question. When an expediente was made up in the executive office containing a decree for a concession, and the expediente was passed over to the departmental junta or territorial deputation, did they not give that decree for a concession the same force and effect as if it had been signed by the governor before the expediente was passed on?

Answer. Whether this decree was signed or not was immaterial, provided the party interested obtained the title. If he had that title, the deputation would not find any objection on account of the decree of concession not being signed.

6 question. State, if you please, whether or not if an expediente made up just as this is, and being so passed from the governor to the departmental junta for their approval or disapproval, they would have refused to act upon the expediente so made up, because of the want of the signature of the governor to his decree of concession therein contained?

Answer. In many cases, while I Secretary of the territorial deputation, several expedientes like this *was* acted upon and approved, they having been sent with an official note from the governor to that body, accompanied by a list descriptive of the various expedientes sent therewith to the deputation; when the signature of the governor was wanting to any of the documents contained in the expediente which were to be signed by the governor, the secretary of the assembly would inform the secretary of the governor of it, and the expediente was then sent back to the governor for his signature. This was not officially required from the governor, but a matter of courtesy.

Questions by Mr. Greenhow, Associate Law Agent.

1 question. Were you at any time secretary of the departmental assembly or junta?

Answer. I never was secretary of the departmental or junta, but was a member, and at times, as such member, secretary of the territorial deputation. The secretary of that body was elected from the members thereof at times, but not always.

JUAN B. ALVARADO.

Subscribed and sworn to before me, this eleventh day of November, 1853.

ALPHEUS FELCH, *Commissioner.*

Filed in office Nov. 11th, 1853.
(Signed) GEO. FISHER, *Sec'y.*

Deposition of Juan B. Alvarado.

UNITED STATES LAND COMMISSION,
San Francisco, Feb. 15, 1853.

On this day, before Commissioner Alpheus Felch, came Juan B. Alvarado, a witness in behalf of claimant, José Joaquin Estudillo, case No. 256, who, after being duly sworn, deposed as follows, his evidence being interpreted by the secretary.

Questions by Judge Thornton, Attorney for the Claimant.

1 question. Have you before given your deposition in this case? If yea, please state fully what you know in reference to the original title-paper mentioned in your answer to the third question therein propounded.

Answer. I gave my deposition in this case on the eleventh day of November last, which is upon file therein, and is now here shown me. The original title-paper mentioned in the answer to the third question therein *are* signed by me and by Manuel Jimeno, then the secretary of the department of California, and was delivered to José Joaquin Estudillo, the grantee therein mentioned, by the said secretary.

This title-paper was executed and delivered while I was governor of California. The document which constitutes a part of the expediente, of which a traced copy is filed *and* this case, and which is particularly mentioned in my answer to the fourth interrogatory in my former deposition, is a copy of the original title-paper which is above mentioned, excepting that it is without signatures.

I saw the original title-paper, above mentioned, in the hands of said Estudillo, the grantee, after it was delivered to him, as above mentioned.

2 question. Do you know the rancho claimed in this case called San Leandro? If yea, state what you know of its boundaries.

Answer. I know the ranch. The boundaries of it are as follows: On the south it is bounded by the arroyo de San Lorenzo, in the north by the arroyo de San Leandro, on the west by the bay of San Francisco, at the east by the range of hills (las lomerias) along the top thereof from one of the said arroyos to the other.

Question by Mr. Greenhow, Associate Law Agent.

1 question. Do you know anything of a dispute between the said Estudillo and Guillermo Castro respecting the line of separation between their lands?

Answer. I know all about it. Castro and Estudillo have always had a dispute, but not in regard to the limits which I gave to them.

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A question arose in regard to a small piece of land which some Indians had without the limits of Estudillo's land, and I ordered that said portion of the land should be reserved to the Indians, but without giving them a title to it; afterwards, when one of the Indians who was the captain died, it appeared that Guillermo Castro had endeavored to obtain from him some right to the land.

I do not know what the result of it was; I used every effort as a friend of the parties to have it settled. I do not know whether there are any Indians there now or not, but I think there are none.

JUAN B. ALVARADO.

Subscribed and sworn to before me this 15 day of Feb'ry, 1854.

ALPHEUS FELCH, *Commissioner.*

Filed in office Feb'y 15, 1854.

(Signed) GEO. FISHER, *Sec'ty.*

Deposition of F. M. Wray.

UNITED STATES OF AMERICA,
State of California, ss.

SAN FRANCISCO, *May 18th*, 1854.

This day personally came before Peter Lott, a commissioner for taking testimony to be used before of U. S. land commissioners in said State, Franklin M. Wray, a witness on behalf of the United States, in case No. 256 on the docket of said board, wherein José Joaquin Estudillo is claimant, and said witness being duly sworn, on oath deposeth in English as follows, to wit:

The attorney for claimant is present.

Questions by U. S. Law Agent.

1 question. What is your name, age and residence?

Answer. My name is Franklin M. Wray; my age 37 years; my residence Alameda county, California.

2 question. How long have you resided in or near your present residence?

Answer. Over two years.

3 question. State whether the land you now occupy is claimed by the claimants in this case, as falling within the boundaries of the San Leandro ranch.

Answer. I understand they do so claim it.

4th question. Do you know William H. Davis? If yea, state his relation to the family of said Estudillo, and his connection with said ranch.

Answer. I do know him; his connection with the family, as I understand it, is that he married one of the daughters of José Joaquim Estudillo, the claimant in this case; he has been for the year past acting as an agent of the family, with respect to the business of the ranch, though I understand his time is not .

5 question. When you first settled on the land you now occupy, had you any difficulty with Estudillo's heirs or said Davis; if yea, what difficulty, and what trespass, if any, did said Davis commit upon you?

Answer. After I settled on the land and got my house built I had difficulty with them; Davis and the Estudillos, and others with them, tore down my house; we had a lawsuit about it; after that I rebuilt my house, and that was torn down, I do not know by whom, though it was supposed to be by the same parties; then I built another house, the one I am now living in.

6 question. Did you take any proceedings against said Davis to recover damages for such trespass; if so, what, and when, and where was the trial had?

Answer. I entered a suit against him before a justice of *of* peace in Oakland, for damages, and Ward, who was made one of the defendants, swore the case from the justice, and it was tried at the district court at Martinez; it was tried in the winter of 1852 and 1853; I cannot tell the exact time.

7 question. Upon the trial of said cause, who was your attorney?

Answer. Mr. John Chipman, a lawyer, formerly of this place, now living at Union city; he and Judge Freelon, of this city, were then associated together.

8 question. State whether, upon the trial of said cause, said Davis offered and gave in evidence any paper relating to the title and ownership of the San Leandro rancho; and if yea, what paper, and how was it signed or executed, if at all?

Answer. They produced a paper in court to prove their title; it was in Spanish; I could not read it; it was translated on the trial by Mr. Carpenter; they called it the expediente of the original title to the land; I was told by Mr. Carpenter that it was not signed by any one.

9 question. Had you ever more than one suit with said Davis?

Answer. No, only the one I have mentioned.

Cross-examined by Counsel for Claimant.

1st question. By what right, and under what character of claim, did you settle on the land in question?

Answer. I settled on it, supposing it to be government land; I had no other kind of claim, and pretended to no other right or title.

2 question. State, if you know, the character of the paper which was introduced on the trial, of which you have here testified.

Answer. I understood it to be a copy of the original title to the land granted to Estudillo; it gave the outlines of the claim of the Estudillos, the boundaries of the land, and the conditions of the grant, and so on.

his
FRANKLIN ⋈ M. WRAY.
mark.

Subscribed and sworn to before me this 18th day of May, A. D. 1854.

PETER LOTT,
Commissioner for taking Testimony, &c.

Filed in office May 18th, 1854.
(Signed) GEO. FISHER, *Sec'y.*

Board of U. S. Land Commissioners.

THE HEIRS OF JOSE JOAQUIM ESTUDILLO vs. THE UNITED STATES. } No. 256. "San Leandro."

Take notice that the depositions of John S. Chipman and others will taken before the commissioners at the court-room of said board, in San Francisco, on the 29th day of June inst., at 1 o'clock p. m. of said day, or as soon thereafter as the matter can be reached on the part of said defendant. Dated June 22, 1854.

Yours, &c., J. H. McCUNE,
Law Agent.

To Saunders & Hepburn, Harry J. Thornton & J. J. Williams, Attorneys for Claimant.

A copy of the above notice was handed me this day.
June 22, 1854. JOHN J. WILLIAMS,
Of Counsel for Claimant.

Deposition of John S. Chipman.

UNITED STATES OF AMERICA,
State of California, ss.

SAN FRANCISCO, *June* 26, 1854.

This day personally came before me, Peter Lott, a commissioner for taking testimony to be used before the board of U. S. land commissioners in the said State, John S. Chipman, a witness in behalf of the United States in case No. 256 on the docket of said board, wherein the heirs of José Joaquim Estudillo are claimants; and said witness being duly sworn on oath, deposes in English as follows, to wit:

The U. S. law agent is present at the opening of the deposition and submitted his interrogations to the witness in writing, requesting the commission to propound them.

Questions by U. S. Law Agent.

1st question. What is your name, age, and place of residence?

Answer. My name is John S. Chipman; my age is 52 years; my residence Alameda county, California.

2 question. What is your occupation; and how long have you resided in California?

Answer. I am a lawyer by profession, and have lived in this State since the middle of December, 1851.

3 question. Had you ever any connection with the trial of a cause in the district court of Contra Costa county, in the fall of 1852, wherein one Franklin M. Wray was plaintiff, and William H. Davis and others defendants; if yea, in what capacity were you connected with that cause?

Answer. I was connected with said cause as the attorney and counsel for said Wray.

4 question. Have you a certified record of the proceedings in said case? If yea, produce it as a part of your answer hereto.

4 question objected to by claimants' counsel, as also the admissibility of the record produced, as incompetent *with* and illegal.—P. L.

Answer. I have such a document, which I herewith furnish, marked "Exhibit 1," to deposition of John S. Chipman.—P. L.

5 question. State whether upon said trial the defendants offered and gave in evidence any document or title-paper relating to the said Leandro rancho, and *whapapt*, and was it executed or signed? And state fully the circumstances under which the same was received in evidence.

Answer. Upon the trial of the cause, Mr. Saunders as attorney for the defendants, Ward and Davis, two of said defendants being present, offered and gave in evidence a document called Copies of Expediente of Estudillo's title to said rancho; from my best recollections said document was not signed, and did not contain a grant or copy of a grant. It was upon traced paper; the paper on file in this case which I have seen is not the one. It was given in evidence under a stipulation between Mr. Saunders and myself; Mr. Saunders alleging, that unless I would allow it he would be compelled to continue the cause, the document not being properly authenticated, and that he would have to send to Monterey to get the original, where I understood him it then was. Mr. Saunders applied to me before *therm* as early perhaps as the first of November, showing me the document alluded to, being in Spanish language, and which I did not examine at a subsequent day. I either verbally or in writing *I* agreed to admit the paper, in order to avoid a continuance of the cause. Said Saunders, at the time of showing me the document, alleged that the original was at Monterey. Saunders was one of the law firm of Saunders, Hepburn, and Badger, of San Francisco, at that time.

6 question. Who were at that time, and who are now the executors of said Estudillos, the claimant?

Answer. At that time, and ever since till now, William H. Davis has acted as executor. Whether José Ramon Estudillo, who was an executor appointed, has ever acted as such I do not know.

7 question. Do you know John B. Ward; if yea, state how he is related to or connected with the family of the said Estudillo; and in what capacity, as agent, overseer, or otherwise, has he acted in regard to said estate; and where said Ward resides; and whether he has been on terms of intimacy with said executors?

Answer. I know said Ward; he married one of the daughters of José Joaquim Estudillo, deceased, she being one of the claimants in this case; as to his capacity in acting for the estate, all I can say is, he has resided at the old mansion of deceased, on the rancho, and I do not know that he has ever exercised any other agency or power than such as would naturally spring from his relationship with the family. I know that he has been on terms of daily intercourse with Mr. Davis; and I do not know the brother-in-law, Estudillo, the other executor, but suppose he lived there with the rest of the family.

8 question. Have you a certified copy of the record of the appointment of executors of said estate? if yea, produce it, and let it be *amended* to this deposition.

Answer. I have this paper, which I now produce, marked Exhibit 2, annexed to deposition of John S. *Chipam*. P. L. is the document.

Cross-examined by Claimant's Counsel.

1st question. Was the expediente referred to in the answer to the 5 question, offered as secondary evidence?

Answer. It was offered and recorded under the stipulation which I have mentioned; it was received in the place, and to have the same effect as an original or duly authenticated copy.

2 question. Was the stipulation which you mention between you and Mr. Saunders verbal, or in writing?

Answer. I cannot say positively; my best impression is, that it was in writing.

Claimant's counsel here objects to all evidence in this deposition of the contents of said stipulation, unless the writing is produced or accounted for.

JNO. S. CHIPMAN.

The claimant's counsel objects to each and all of the questions and answers in chief herein as illegal and irrelevant, except the first question and answer; and also on the ground that the law agent was not present at the taking of the deposition; nor was the associate law agent present.

The above objections of Mr. Williams, acting as counsel for claimants, were interposed after the cross-examination, and after the witness had been sworn and departed from the room. The law agent was present at the opening of the deposition and submitted to the commissioner the interrogatories in chief in writing, requesting them to be propounded to the witness; he then retired from the room.

The counsel for claimant was not present at the opening of the deposition, which was after one o'clock, the hour specified in the annexed notice, alleging that he understood from one of the claimants that the associate law agent had agreed upon two o'clock as the hour for the deposition.

The foregoing deposition was subscribed and sworn before me, this 29th day of June, A. D. 1854, and the notice of taking the same hereto

annexed furnished to me at the commencement of the deposition, in the court-room of the U. S. land commission in San Francisco.

PETER LOTT,
Comm'r for taking Testimony, &c.

Filed in office June 29, 1854.
(Signed) GEO. FISHER, *Sec'y.*

Deposition of John C. Pelton.

UNITED STATES OF AMERICA,
State of California, ss.

SAN FRANCISCO, *Oct. 5th*, 1854.

This day came before Peter Lott, commissioner for taking testimony to be used before the board of U. S. land commissioners, in said State, John C. Pelton, a witness on behalf of the United States, in case No. 256 on the docket of said board, wherein José Joaquin Estudillo is claimant, and said witness being duly sworn on oath, deposed as follows:

The counsel for the claimant is present.

Questions by U. S. Law Agent.

1st question. What is your name, age, and residence?

Answer. My name is John C. Pelton; my age is 28 years; my residence in San Francisco, California.

2d question. Do you know John C. Ward, the husband of one of the heirs in this case; if yea, did he ever tell you of his losing papers relative to said estate of Estudillo; if yea, when did he mention it, what papers did he say he had lost, where did he say he had procured them, and when did he say he had lost them?

Answer. I know said John C. Ward; he told me of having lost certain papers relative to said Estudillo's estate. I cannot recollect the time precisely, though it was some time in the fall of 1853; he said he lost the expediente or title-papers to the rancho. He said he procured them from Mr. Saunders, an attorney, who had acted in some cases for the estate, for the purpose of delivering them to Judge Thompson, his counsel in the claim.

The time when he lost them, according to his statement, was on a certain day when a young man, who was connected with the business of the ranch, was shot. I do not remember the time precisely, but I think it was in September, 1853.

3d question. Do you know William H. Davis, one of the claimants in this case; if yea, have you ever heard him tell any person where they could find and examine the title-papers of said rancho; and if yea, state when, where, and under what circumstances such statement was made?

Answer. I am acquainted with said William H. Davis, and I cannot specify as to day and date when I have heard him speak of the title-papers of said ranch, but frequently when he has had disputes and

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difficulties over there with settlers or squatters, and they have called upon him to produce his title, he has used language, in substance, such as this: I can show you title-papers enough in San Francisco. Go and look at the records, and you will find title-papers enough there. Conversation similar to this has often passed between him and the settlers, but I cannot cite with accuracy the time and place, and circumstances, more than this.

JOHN C. PELTON.

Subscribed and sworn to before me, this 5th day of October, A. D. 1854.

PETER LOTT,
Commissioner, &c.

Filed in office Oct. 6th, 1854.
(Signed) GEO. FISHER, *Sec'y.*

Deposition of Aaron F. Dyer.

UNITED STATES OF AMERICA,
State of California, ss.

SAN FRANCISCO, *Oct.* 5, 1854.

This day came before Peter Lott, commissioner for taking testimony to be used before the board of U. S. land commissioners, in said State, Aaron F. Dyer, a witness in behalf of the United States, in case No. 256 on the docket of said board, wherein José Joaquim Estudillo is claimant, and said witness being sworn, deposed as follows:

The counsel for claimant is present.

Questions by the U. S. Law Agent.

1st question. What is your name, age, and residence?

Answer. My name is Aaron F. Dyer; my age is 32 years; my residence in .

2d question. Do you know John C. Ward, the husband of one of the heirs in this case; if yea, did he ever tell you of his losing papers relative to said estate of Estudillo? If yea, when did he mention it? what papers did he say he lost, where did he say he had procured them, and when did he say he lost them?

Answer. I know said John C. ward; he mentioned to me some time in February or March of this year, that he had lost certain papers relative to the title of the Estudillo estate; I understood him to say he had lost the title-papers; he said he procured them in San Francisco, from their attorney; he said he lost them on a certain night crossing the bay, and going up the creek in a small boat; he had them in a side-pocket, and thought he lost them while pushing with an oar, about the time that a man was shot in some difficulty across the bay; I do not know the time.

A. F. DYER.

Subscribed and sworn to before me on this day, 5th October, A. D. 1854.

PETER LOTT, *Comm'r, &c.*

Filed in office Oct. 6th, 1854.

(Signed) GEO. FISHER, *Sec'y.*

Deposition of J. T. Stratton.

UNITED STATES OF AMERICA,
San Francisco.

UNITED STATES LAND COMMISSION,
San Francisco, Dec. 11th, 1854.

On this day, before Commissioner Alpheus Felch, came James T. Stratton, a witness in behalf of the claimant, José Joaquim Estudillo, in case No. 256, who, after being duly sworn, deposes as follows:

Questions by Mr. Williams, Attorney for Claimant.

1 question. Please state your name, age, and place of residence.

Answer. My name is James T. Stratton; my age twenty-four years; and I reside at Alameda, in California.

2 question. What is your present occupation, and where have you exercised it?

Answer. I am a surveyor and civil engineer, and have exercised that employment lately in Alameda county, part of the time as deputy county surveyor.

3 question. Are you acquainted with the rancho called San Leandro, and claimed in this case by the heirs of José Joaquim Estudillo? if yea, state what quantity of land that rancho contained, and your means of knowledge.

Answer. I am acquainted with it; I made a partial survey of the ranch about four months ago, and had pretty good means of knowing the quantity of land in it. It contains from one square league to one and a quarter—I mean exclusive of marsh land; by marsh land I mean that portion which is covered by the water in extreme high tides.

Questions by Mr. Blanding, Associate Law Agent.

1 question. What are the boundaries which include the quantity of a square league or a league and a quarter, mentioned by you?

Answer. It is bounded on the north by the San Leandro creek, on the east by the hills and Castro's line, on the south by said Castro's line and San Lorenzo creek, and on the west by the bay of San Francisco and the marsh land.

2 question. What is the form of said rancho?

Answer. I should think it is nearly square.

3 question. What is the distance from the San Leandro to the San Lorenzo, and from Castro's line to the marsh?

Answer. From the San Leandro to the San Lorenzo is about two and three quarters miles, and from Castro's line to the marsh about the same distance.

4th question. How is Castro's line marked?

Answer. His line, as run by Mr. Higley, United States deputy surveyor, passes southwesterly through certain springs to the San Lorenzo.

JAMES T. STRATTON.

Subscribed and sworn to before me this 11th day of December, 1854.

ALPHEUS FELCH,
Commissioner.

Filed in office Dec. 11th, 1854.

(Signed) GEO. FISHER, *Sec'y.*

Deposition of José Castro.

UNITED STATES LAND COMMISSION,
San Francisco, Dec. 11th, 1854.

On this day, before Commissioner Alpheus Felch, came José Castro, a witness on behalf of the claimant, José Joaquim Estudillo, in case No. 256, who, after being duly sworn, deposed in Spanish as follows—his evidence being interpreted by the secretary, interpreter of the board:

Questions by Mr. Williams, Attorney for Claimant.

1 question. Please state your name, age, and place of residence.

Answer. My name is José Castro; my age is forty-six years, and my residence Monterey, California.

2d question. Look at the map now shown to you, contained in the expediente annexed to the deposition of Juan B. Alvarado, heretofore taken and filed in this case, marked Exhibit No. 2, with the initials "A. F.," and explain, if you can, by whom and for what purpose the lines marked "Linea divisionea en latitude" and "Linea divisionea en longitude" were drawn on said map?

Answer. At the time the expediente was formed there was a dispute between José Joaquim Estudillo and Guillermo Castro about their lines, and the lines referred to in the question were drawn by José Fernandez, then alcalde of San José, who had jurisdiction over the place where the land is situated. The lines were drawn by him as the line between them, and designated by Fernandez as the settlement of the dispute.

The parties were not satisfied with these lines and would not abide by them; and as Fernandez had no authority from the governor to settle the dispute by establishing the lines, and afterwards Gov. Alvarado ordered me, as the prefect of the district, to draw the dividing line and settle the dispute between them, I drew the line accordingly, but the line drawn by me is not represented on this map. It commenced at the place marked "Laguna," on said map, and run in a southeasterly direction to the San Lorenzo creek. The line as established by me is correctly laid down and marked on the map marked document "H H No. 1," attached to my deposition heretofore taken and filed in this case.

3d question. Were the lines above mentioned drawn on said map before or after the issuing of the grant to José Joaquin Estudillo?

Answer. They were all drawn before the title was issued to Estudillo, and said grant was made according to the above mentioned line, which was drawn by me.

Questions by Mr. Blanding, Associate Law Agent.

1st question. At what time were these maps made, and which map was before the governor at the time of making the grant?

Answer. They were made about 1841 or 1842. I do not know when the one attached to the expediente was made; heard it was made by the order of the secretary, or in his office. The map above mentioned, marked "H H No. 1," was before the governor when he made the grant.

2d question. How were you governed in running the dividing line mentioned as run by you?

Answer. After having informed myself from several disinterested persons on the subject, I came to the conclusion that this line would be just, and therefore I ran it as laid down on said map.

3d question. Give all the points on this line which go to fix its location.

Answer. I do not know of any objects on the land to mark this line; I drew it on the map from the information I received.

4th question. Do you know that the grant to Estudillo refers to the line drawn on the map by you? And if so, in what terms does it refer to it?

Answer. I have not seen the title: Governor Alvarado told me he had issued it according to that line.

5th question. When you were ordered to run the line, was it for the purpose of issuing a grant, or to divide the possession between the adjoining ranchos?

Answer. The governor said it was to issue the title therefor; the order to me by the governor was verbal; when I presented to him the map with the line drawn upon it by me, the governor said he would issue the grant according to said line.

6th question. When you say it was a just line, do you mean it was just as the basis of a grant, or for the purpose of settling a dispute between neighbors who had no grant?

Answer. I mean that it was a just line for the issuing of a grant.

7th question. Look at the map attached to the expediente, and state whether it is correct or incorrect.

Answer. The line that I drew is not on this map.

8th question. Do you know any other way than by the saying of the governor, that the grant was issued according to the line run by you?

Answer. I do not.

The law agent objects to that portion of the deposition which is hearsay testimony; and also to the whole deposition, because it is an attempt to contradict written evidence or documents.

JOSE CASTRO.

Subscribed and sworn to before me this 11th day of February, 1854.
ALPHEUS FELCH, *Comm'r.*

Filed in office Dec. 11th, 1854.
(Signed) GEO. FISHER, *Sec'y.*

Exhibit No. 2, A. F., annexed to the deposition of Juan B. Alvarado, Nov. 11, 1853.

Espediente.

Promovido por el ciudadano José Joaquin Estudillo en pretencion de terreno conocido con el nombe de San Leandro.

No. 300.

Sello Tercero—Dos Reales.

Habilitado provisonalmente por la aduana maritima del puerto de Monterey, en el departamento de las Californias, para los años de mil ochocientos cuarenta, y mil ochocientos cuarenta y uno.
ALVARADO. ANTONIO MA. OSIO.

Rehabilitado por la misma para el año de mil ochocientos cuarenta y dos.
ALVARADO. ANTONIO MARIA OSIO.

Ex'mo S'or:

El C. José Joaq'n Estudillo, Mejicano por nacimiento anté la justificacion de V. E. se presenta pr. medio de este, diciendo; que para propocionarse la subsistencia y poder mantener una enesida familia, cual es una esposa y diez hijos despues de 17 de a's 4 meses 7 dias de haver sido servido en la carera militar; solicito en f'ha 8 de Enero, de Enero, de 1837, el terreno conocido con el nombre de arroyo de S'n Leandro al de S'n Lorenzo cuatro citios de ganado mayor de P a O y haciendo lo grado de V. S. quiess ve con mano larga y protectora a los habitantes de este suelo, me establesiere y siguiese trabajando con en interin se concluyo los tramites de ley, asi lo he verificado E. s'or en el espasoiso tiempo de 5 años 5 meses y dias habiendo prederido estrabio mi espediente en la secratario de Gobierno, haya nada solicitud acompañando debidam'te el adjunto diseño del mencionado terreno, pr. que en su vista obre lo que fuera de su agrado con lo que quedaré muy satisfecho de su resolucion, P. J. A. V. E. suplico que en uso de sus bondades vea propicia mi solicitud en lo que recibiré la gracia q. pido y espero, tributando a V. E. mi eterna gratitud.
Monterey, Junio 28, de 1842.
JOSE JOAQ'N ESTUDILLO.

Sello Tercero—Dos Reales.

Habilitado provisionalmente por la aduana maritima del puerto de Monterey, en el departamento de las Californias, para los años de mil ochocientos cuarenta y mil ochocientos cuarenta y uno.
ALVARADO. ANTONIO MARIA OSIO.

Rehabilitado por la misma por el año de mil ochocientos cuarenta y dos. ANTONIO MA. OSIO.

ALVARADO.

Monterey, 18 de October, de 1842.

Vista la peticion con quedá principio este espediente, los informes que se tubieran por conveniente tomar con todo lo demas que se tubo presente y ser combeniente de conformidad con las leyes y reglamentos de la materia declaro à D'n Joaquin Estudillo, dueño en propriedad del terreno conocido con el nombre de San Leandro, colindante pr. la parte del norte con el arroyo de San Leandro, al este con los demarcaderos de las ojas de agua de las tierras q. ocupan los Indios, que actualmente estan establecidos desde el punto tomado una linea recta pr. la parte del sur hasta llegar al arroyo lo de San Leandro, sin comprender las tierras que cultivan los Indios, indicados y al poniente qe. con el mar librese el correspond'te despacho tomese razon en el libro respectivo y dirigase este espediente a la ex'ma junta depart'l, para su aprobacion. El ex'mo s'or gobernador asi lo mando, decreto y firmo.

Juan B. Alvarado, Gobernador Constitucional del Departamento de las Californias.

Por cuanto el cuidadano Joaquin Estudillo ha pretendido para su beneficio personel y el de su familia una parte del terreno conocido con el nombre de San Leandro, ciendo los linderos por la parte del norte con el arroyo de San Leandro; al este con los demarcaderos de las ojos de agua de las tierras que ocupan los Indios, que actualmente estan establecidos desde este punto tomando una linea recta pr. la parte del sur hasta legar al arroyo de S'n Lorenzo, sin comprender las tierras que cultivan los Indios, indicados y al poniente con el mar, practicadas previamente las diligencias y averiguaciones consernientes segun lo despuesto por leyes y reglamentos de la materia, usando de las facultades que me son conferidas a nombre de la nacion Mejicana, he venido en concederle el terreno mencionado, declarandole la propriedad de el por las presentes letras, y pr. su aprobacion que ha obtenido de la ex'ma junta departamental sujetandose a las condiciones siguientes:

1a. Podra cercarlo sin prejudicar las travesias, caminos y servidumbres; lo disfrutara libre y esclusivamente destinandolo al uso ó cultivo que mas le acomode, pero dentro de un año fabricara casa y estera habitada.

2a. Solicitara del juez respectivo que le de posecion juridica en virtud de este despacho por el cual se demarcaran los linderos en cuyos limites, pondra a mas de las mojoneras algunos arboles frutales ó silvestres de alguna utilidad.

3a. El terreno de que se hace donacion es un sitio de ganado mayor, poco mas ó menos segun esplica el diseño que corre agregado con el espediente respectivo. El juez que diere la posecion lo hara medir conforme a ordenanza quedando el sobrante a la nacion pa. los usos que mas le convenga.

4a.
reno y
En

No.

y

4a. Si contraveniere a estas condiciones perdera su derecho al terreno y sera denunciable por otro.

En consecuencia mando que teniendose por firme y valedero este titulo se tome razon de el en el libro respectivo y se entreque al interesado para su resguardo y demas fines.

Dado en Monterey, a dies y seis de Octubre, de mil ochocientos cuarenta y seis.

[*For map see original, page* 46.]

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, Samuel D. King, surveyor general of the United States for the State of California, and as such having in my office and under my charge and control a portion of the archives of the former Spanish and Mexican territory or department of Upper California, do hereby certify the nine preceding and hereunto annexed pages of tracing paper, numbered from one to nine inclusive, and each of which is verified by my initials, (S. D. K.,) exhibit true and accurate copies of certain documents on file and forming part of the said archives in this office.

In testimony whereof, I have hereunto signed my name officially, and affixed my private seal, (not having a seal of office,) at the city of San Francisco, California, this 23d day of April, 1852.

SAMUEL D. KING,
Surveyor General California.

Filed in office May 31st, 1852.

GEO. FISHER, *Sec'y.*

Translation of Expediente A.

Record of proceedings instituted by citizen Josè Joaquin Estudillo, soliciting the tract of land known by the name of San Leandro.

No. 300.

Third Stamp—Two Reals.

Provisionally authorized by the maritime custom-house of the port of Monterey, in the department of the Californias, for the years one thousand eight hundred and forty, and one thousand eight hundred and forty-one.

(Signed) ANTONIO MARIA OSIO.

(Signed) ALVARADO.

[SEAL.]

Revalidated by the same for the year one thousand eight hundred and forty-two.

(Sgd.) ANTONIO MARIA OSIO.

(Sgd.) ALVARADO.

MOST EXCELLENT SIR:

Citizen José Joaquin Estudillo, a Mexican by birth, hereby appears before your excellency, saying that in order to procure his subsistence and enable himself to support a large family, consisting of a wife and ten children, after having served in the army 17 years 4 mos. and 7 days, on the eighth day of January, eighteen hundred and thirty-seven, he petitioned for the tract of land known by the name of arroyo de San Leandro, containing four square leagues (sitios de ganado mayor) from east to west, and having obtained from your excellency, who extends a generous and protecting patronage towards the inhabitants of this land, permission to settle himself and continue his labors; meanwhile the proper legal proceedings thereupon should be concluded, which he has accordingly done.

Your excellency, during the space of 5 years 5 months and some days, and his petition having been misled in the office of the secretary of state, he renews his application, duly accompanying the annexed plot of the aforesaid land, in order that in consideration thereof you may determine what you may esteem proofs.

Therefore he prays your excellency, in the exercise of your goodness, to consider his petition favorably, by which he will receive the kindness asks and expects, rendering unto your excellency his everlasting gratitude.

Monterey, June 28th, 1842.

JOSE JOAQUIN ORTEGA.

Stamp Third—Two Reals.

Provisionally authorized by the maritime custom-house of the port of Monterey, in the department of the Californias, for the years one thousand eight hundred and forty, and one thousand eight hundred and forty-one.

ANTONIO MARIA OSIO.

ALVARADO.

Revalidated by the same for the year one thousand eight hundred and forty-two.

(Sgd.) ANTONIO MARIA OSIO.

(Sgd.) ALVARADO.

In view of the petition at the head of this espediente, the reports that were esteemed necessary to be had, with everything else which was had, present and proper to be considered in conformity with the laws and regulations upon the subject, I declare Don Joaquin Estudillo to be the owner in property of a part of the tract of land known by the name of "San Leandro;" bounded on the north by the arroyo of San

Leandro; on the east by the places where the waters from the springs on the lands which the Indians who are now established there occupy, waste themselves (arranadores); thence on the south side, in a direct line to the arroyo of San Lorenzo, without embracing the lands which *which* the said Indians cultivate; and on the west by the bay (mar).

Let the corresponding title issue, record be made in the proper book, and this espediente be transmitted to the most excellent departmental junta for its approval.

The most excellent señor governor thus ordered, decreed, and signed it.

JUAN B. ALVARADO,
Constitutional Governor of the Department of Californias.

Whereas citizen Joaquim Estudillo has petitioned, for his personal benefit and that of his family, for a part of the tract of land known by the name of "San Leandro;" the boundaries being, on the north the arroyo of San Leandro; on the east the places where the waters from the springs, on the lands which the Indians now establish there occupy, waste themselves (arranadores); thence on the south, by a direct line to the arroyo de San Lorenzo, without embracing the lands which the Indians cultivate; and on the bay (mar):

The proceedings and investigations having been previously had thereto according to the provisions of the laws and regulations upon the subject, in the exercise of the powers which I am invested in the name of the Mexican nation, I have concluded to grant to him the tract of land aforesaid, hereby declaring unto him the ownership thereof, and having received the approval of the most excellent departmental junta, being subject to the following conditions:

1st. He may enclose it without prejudice to the crossings, road and sevitudes; he shall enjoy it freely and exclusively, appropriating it to such use or cultivation as may best suit him, but within one year he shall build a house, and it shall be occupied.

2d. He shall request the proper juez to give him judicial possession thereof, in virtue of this patent, by which the boundaries shall be marked out, at the limits of which he shall place, besides the landmarks, some fruit or wild trees of some utility.

3d. The land of which donation is made, contains one square league, (ten *setos dlaguade* mayor,) a little more or less, as shown by the sketch *calued* in the expediente.

The juez who shall give the possession will cause it to be measured according to ordinance, the surplus remaining to the nation for the proper purposes thereof.

4th. If he contravene these conditions he shall forfeit his right to the land, and it shall be denounceable by another.

Therefore I order that, this title being held as firm and valid, an entry be made thereof in the respective book, and that this be delivered to the interested party for his security and other purposes.

Given at Monterey on the sixteenth day of October, 1842.

On the margin of this sketch is the following explanation:
Sketch of the place known by the name of "San Leandro," made by order of the prefect.
The diagram embraces the two places, and only the hills which divide them.

I, George Fisher, secretary of the U. S. land commission to ascertain and settle private land claims in the State of California, hereby certify the foregoing to be a true and correct translation of a Spanish document, in case No. 256, wherein José Joaquim Estudillo is claimant, against the United States, for the place named "San Leandro," now on file in this office.

In testimony whereof, I have hereunto signed my name at office at the city of San Francisco, California, this eleventh day of December, A. D. 1854.

(Signed) GEO. FISHER, *Sec'y.*

Filed in office Dec. 11th, 1854.

(Signed) GEO. FISHER, *Sec'y.*

Order of Revisor.

JOSE JOAQUIM ESTUDILLO vs. THE UNITED STATES. } No. 256.

San Leandro.—Order of Revises.

It appearing to the satisfaction of the board that the claimant in this case has died since the filing of this claim, and that his death and the names of his heirs, among other things, appear by depositions taken prior to this order: upon consent of the law agent of the United States, that the said depositions heretofore taken may be read in evidence in the case without objection to the time of their being taken, but subject to other legal objections, it is ordered this case be revived in the name of the said heirs, viz: Melina Conception Estudillo and her husband, John B. Ward, José Ramon Estudillo, Maria de Jesus Estudillo and her husband, William H. Davis, José Antonio Estudillo, José Vicente Estudillo, Louiz Antonio Estudillo, Maria Dolores Estudillo, Madalina Estudillo, Jesus Maria Estudillo, and Marina Juana Martinez, the widow of the said deceased, José Joaquim Estudillo.

Filed in office Sept. 28, 1853.

(Signed) GEO. FISHER, *Sec'y.*

Stipulation.

UNITED STATES LAND COM'N FOR CALIFORNIA.

THE HEIRS OF JOSE JOAQUIN ESTUDILLO vs. THE UNITED STATES. } No. 256.

It is stipulated hereby, that the traced copies filed in this case, and certified by Mr. King, the late U. S. surveyor general for California,

under his private seal, may be read as evidence just as though they were re-copied and certified under the seal now provided for the surveyor general's office.

V. E. HOWARD,
H. J. THORNTON.

Filed in office Sept. 28, 1853.
(Signed) GEO. FISHER, *Sect'y*.

Affidavit of J. B. Ward.

THE HEIRS OF JOSE J. ESTUDILLO
vs.
THE UNITED STATES. } No. 256.

San Leandro.

This affiant being duly sworn, states that the grant or titulo signed by the governor of California, Juan B. Alvarado, for the land in this case claimed, was in the possession of the original claimant before this board, and among the papers relating to the claim down to the time of his death; that after that time, and since the filing of the said claim before this honorable board, the said original grant was in the possession of this affiant, who married one of the heirs of the said grantee, and was casually lost by him with many of affiant's private papers; that this affiant has made dilligent search for this document wherever he could reasonably suppose it may be, without success, and has no doubt the same is irretrievably lost.

This affiant trusts that by the evidence of the governor who made the said grant, and of others, its issuance, as it appears in the archives filed in this case, will be fully established.

JOHN B. WARD.

Subscribed and sworn to before me this 13th day of October, A. D. 1853.

ALPHEUS FELCH, *Comm'r*.

Filed in office Oct. 18, 1853.
(Signed) GEO. FISHER, *Sect'y*.

Exhibit 1 *to Deposition of Juan S. Chipman.*

FRANKLIN RAY
vs.
WM. H. DAVIS, FRANCIS WARD, JOSE ANTONIO ESTUDILLO, —— ESTUDILLO.

In Justice's Court, before Edson Adams, esqr., J. P., Contra Costa Co., California.

Franklin Ray, plaintiff in this cause, complains of the aforesaid defendants as follows, to wit:

Said plaintiff was the owner of a dwelling-house situated at or near San Leandro, in the county of Contra Costa, and that the said defendants did, on the twenty-first day of March, A. D. 1852, tear down and destroy said dwelling-house, whereby said plaintiff was damaged in a large amount, to wit, the amount of three hundred dollars, and therefore he brings suit.

FRANKLIN RAY.

Sworn and subscribed this 22d day of March, A. D. 1852, before me.

EDSON ADAMS,
Justice of the Peace.

Filed March 22, 1852.

EDSON ADAMS, *J. P.*

Time when filed in Dist. Court.

Filed 6 July, 1852.

THOS. A. BROWN, *C'lk.*

Summons.

UNITED STATES OF AMERICA,
State of California, county of Contra Costa, sct.

Justice's Court.—San Antonio Township.

The people of the State of California to the sheriff, or any constable, of the county of Contra Costa.

W. H. Davis, Ward, José Antonio Estudillo, Estudillo: You are hereby summoned to appear before me at my office in San Antonio township, of said county of Contra Costa, on the 24th day of March, A. D. 1852, at 1 o'clock p. m., to answer unto the complaint of Franklin Ray, in the sum of three hundred dollars damages for tearing down his house.

Given under my hand and seal this 25th day of March, A. D. 1853.

EDSON ADAMS,
Justice of the Peace.

Returned, served personally and by copy on one of the within named d'fts, Ward, and on the other three by leaving a copy at their last place of residence.

March 25, 1852.

JAMES ALLEN, *Constable.*

Time when filed in Dist. Court.

Filed 6 July, 1852.

THOS. A. BROWN, *Cl'k.*

Answer filed in Justice's Court.

Before Edson Adams, justice of the peace for Contra Costa county, State of California.

FRANKLIN RAY
vs.
FRANCIS WARD et al.

Defendant separately answered unto the complaint filed in this cause; admits that on or about the 21 day of March, A. D. 1852, they pulled down a certain building situated near San Leandro, in said county, but says that he is not informed, and therefore neither admits nor denies that said building belonged to plaintiff.

He denies that plaintiff sustained damages thereby, as alleged in said complaint.

Further answering, defendant says he had perfect right to pull down said house aforesaid, because, he says that Estudillo was on the day and year aforesaid in the possession of the land occupied by said building as the lawful owner thereof, and being so in possession, as aforesaid, the plaintiff trespassed thereupon, and said building as aforesaid, and that this defendant, as the agent of the said Estudillo, pulled down said building, and did *performed* the said acts complained of. Defendant further says, that by reason of the premises the title to said land is involved in this action, and prays that the same may be certified above, according to the statute in such cases made and provided.

JOHN B. WARD.

Sworn and subscribed on this 29 day of March, 1852.

EDSON ADAMS, *J. P.*

Filed March 29, 1852.

EDSON ADAMS, *J. P.*

Time when filed in Dist. Court.

Filed in office 6 July, 1852.

THOS. A. BROWN, *Clerk.*

Plaintiff's Affidavit.

FRANKLIN RAY
vs.
JOHN B. WARD et als.

Plaintiff in this case, being sworn, deposes and says that in the trial of the above entitled cause the title to real estate is not involved, and that for the purposes of this trial he will not dispute the title to the said land upon which the house was situated, mentioned in complaint in this case, whoever may claim the same.

FRANKLIN RAY.

Sworn and subscribed on this day, 29 of March, A. D. 1852, before me.

EDSON ADAMS,
Justice of the Peace.

Filed in office March 29, 1852.

EDSON ADAMS, *J. P.*

When filed in Dist. Court.

Filed 6 July, 1852.

THOS. A. BROWN, *Clk.*

Bond upon Removal of Cause.

Before Justice Adams, justice of the peace for Alameda county, in the State of California.

FRANKLIN RAY
vs.
JOHN B. WARD,
WILLIAM H. DAVIS.

Know all men by these presents, that we, John B. Ward, William H. Davis, José Antonio Estudillo, José Ramon Estudillo, José Joaquim Estudillo, are held and firmly bound unto the said Franklin Ray in the sum of two hundred and fifty dollars, to the payment of which we hereby bind ourselves, our and each of our heirs, executors and administrators.

In witness whereof, we have hereunto severally set our hands and seals, this day of March, A. D. 1852.

Whereas it appears by depositions answers in the above action, verified according to law, that the determination of the action will necessarily involve the decision of a question to real property, and the said justice has ordered and determined that all proceedings in said action before him be suspended, and that the pleadings therein be certified by him to the district court for said county:

Now, if said defendants shall well and truly pay all costs of said action, if it be decided against them by said district court, then these presents to be null, void, and of no further force and effect, otherwise to be and remain in full force and effect.

WILLIAM H. DAVIS, [L. S.]
JOHN B. WARD, [L. S.]
JOSE JOAQUIN ESTUDILLO, [L. S.]

Bond accepted by consent of the plaintiff, March 30, 1852.
Before me.

EDSON ADAMS, *J. P.*

Filed March 30th, 1852.

EDSON ADAMS, *J. P.*

When filed in Dist. Court.

Filed 6 July, 1852.

THOMAS A. BROWN, *Cl'k.*

Justice's Transcript.

FRANKLIN RAY
vs.
WM. H. DAVIS, —— WARD, JOSE ANTONIO ESTUDILLO, —— ESTUDILLO.
} Justice's Court, town and county of Contra Costa.

1852, March 22.—Now comes plaintiff into court, and filed his complaint against the above entitled df't for damages in the sum of three hundred dollars.

March 25.—Summons issued returnable March 29th, 1852, at 1 o'clock p. m. Summons returned, served personally and by copy on one of the above named dft's, Ward, and on the other three by leaving a copy at their last place of abode. Subpœneas issued to Jacob W. Harlan, J. Hartin, J. W. Kennedy.

March 29.—Subpœnas returned served, three *witness* admitting duly served. Now came both parties into court.

Order sending cause to Dist. Court.

Df't filed a verified answer that the bill to real estate is necessarily involved, whereupon it is considered that the papers be transmitted to the district court.

EDSON ADAMS, *J. P.*

Justice's fees - - - - - - - - - -	$8 00
Constables' " - - - - - - - - - -	36 00
	$44 00

March 22.—Cash paid into court by pl'tff - - - -	$10 00
" 29.—Cash paid into court by d'ft - - - -	4 25
	$14 25

EDSON ADAMS, *J. P.*

I hereby certify that the above is a copy from my docket.
EDSON ADAMS, *J. P.*

Transcript when filed in Dist. Court.

Filed 6 July, 1852.
THOMAS A. BROWN, *Cl'k.*

Minutes of Trial before Dist. Court, 7 Nov., 1852.

Pleas in District Court, 3 Judicial District, Contra Costa county.

FRANKLIN RAY
vs.
WILLIAM H. DAVIS.
} Nov. 7, 1852.

Now, on this day appears the parties — plaintiff, by John S. Chip-

man, his attorney; defendant, by ——— Saunders, his attorney—and by consent waived a jury and go to trial.

W. D. Dreeson, pl'ff witness, sworn.

C. W. Pease sworn for defendant.

José S. Benyesa, pl'ff wit., sworn.

Jos. Emeric sworn as interpreter.

José M. Amador sworn for pl'ff.

SAME
vs.
SAME.

Afternoon, 7 Nov., 1852.

This cause is again taken up. Franklin Ray, pl'ff, sworn.

Pl'ff introduced original grant of José Joaquin Estudillo, which is read and translated by H. W. Carpentier, specially sworn for that purpose. The testimony being closed, and after the proof and allegations of parties, the cause is submitted to the court, and the court takes the matter under advisement.

Judgment of Dist. Court, 8th Nov., 1852.

SAME
vs.
SAME. } Nov. 8, 1852.

This cause having been previously argued, heard, and submitted to the court, and the court being sufficiently advised therein, the court do find that the plaintiff, on the day and at the place mentioned in the plaintiff's complaint, erected upon the land of José Joaquin Estudillo a small house against the will and consent of the said Estudillo; that the defendants as agent of the said Estudillo, by his consent at the time mentioned in said complaint, without the consent of the said plaintiff, pulled down said house; therefore, the court find for defendants.

It is, therefore, ordered and adjudged, and decreed by the court, that the said W. H. Davis and others do recover of and from the said Franklin Ray, said plaintiff, the sum of dollars and cents, costs and expenses of this suit, and that he have execution therefor.

Opinion of the court filed 8 Nov., 1852.

Finding of the Dist. Court.

RAY et al.
vs.
DAVIS et al.

The court find that the plaintiff, on the day and at the place mentioned in the plaintiff's complaint, erected upon the land of José Joaquin Estudillo a small house, against the will and consent of the said Estudillo; that the dfts., as the agents of said Estudillo, and by his con-

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sent at the time mentioned in said complaint, without the consent of the said plaintiff pulled down said house; wherefore the court find for defendants.

Time when Judgment and Role filed.

Judgment and role filed 9 Nov., 1852.

THOS. A. BROWN, *Clerk.*

STATE OF CALIFORNIA,
County of Contra Costa.

I, Thomas A. Brown, clerk of the district court in and for the county of Contra Costa, do certify that the foregoing is a full and perfect transcript of the judgment role filed in said action as the same now appears in this office.

[SEAL.] Witness my hand and seal, this 11th day of May, 1854.

THOMAS A. BROWN, *Clerk.*

16 folios, at 40c., $6 40.

Filed in office June 29th, 1854.

(Signed) GEO. FISHER, *Sec'y.*

[*For map see original, page* 63.]

Exhibit No. 2, annexed to Deposition of John Chipman.—P. L., 256, 2.

STATE OF CALIFORNIA,
Alameda County, ss.

Be it remembered, that among the records of the probate court of said county, now remaining in the clerk's office therein, and which were transmitted from the county of Contra Costa to said county of Alameda, in pursuance of law, is found the following, viz:

In the matter of the Estate of Joaquin Estudillo, deceased.

Application for proof of Will.

The present term of this court having been fixed for the proof the will of deceased, and, in pursuance to a previous order, citations having been issued and served upon the parties, heirs, and executors, *willoms*, and all persons interested, and it appearing to the satisfaction of the court that the parties, including the witnesses to the will, all have been duly cited to appear before this court, the court appoint E. T. Weld attorney for the minor heirs of said estate.

The said parties appearing, the minor heirs by E. T. Weld, their attorney, and the other heirs in their own proper persons, Wm. M. Smith, one of the subscribing witnesses to the said will, sworn in proof of the will, and the testimony being heard, and the court being advised therein, do order that the said will be admitted to probate.

It is ordered that letters testamentary, with the will annexed, issue to the executors named in the will, José Ramon Estudillo and William H. Davis, upon their filing each a bond in the sum of five thousand dollars, to be approved by the judge of this court.

Ordered, that William M. Smith, José Martinez, and Ignacio Peralta be appointed appraisers of the estate of Joaq. Estudillo.

William H. Davis, José Ramon Estudillo, each appear and file a bond each in the sum of five thousand dollars, which said bonds are respectfully approved by the court and filed.

It is ordered, that the said executors present and file an inventory of the property of said Estudillo in this court at the present term of this court.

I, Thomas A. Brown, clerk of the probate court in and for Contra Costa county, do certify that the foregoing is a correct copy of an order made on the record of said court, on the 27 of September, A. D. 1852.

[SEAL.] In witness whereof, I hereunto set my hand and seal on this 16th day of September, A. D. 1853.

THOMAS A. BROWN.
By L. M. BROWN, *Dep'ty.*

I, A. M. Church, clerk of the county of Alameda, in the State of California, do hereby certify the above to be a true and correct copy of a paper now on file in the probate court of said county, among the papers in the estate of Joaquin Estudillo, deceased.

Witness my hand and the seal of said probate court, this 27th day of June, A. D. 1854.

[SEAL.]

A. M. CHURCH, *Clerk.*

Filed in office June 29th, 1854.
(Signed) GEO. FISHER, *Sect'y.*

Stipulation.

Before the U. S. Land Commissioners &c.—No. 256.

Rancho San Leandro—Heirs of José Joaquim Estudillo, deseased, Claimants.

The existence and loss of the book of registry of titles, wherein were registered the titles issued by and under the Mexican government for lands in California, from the year 1839 inclusive to the year A. D. 1846, is hereby admitted in this case, *and* the said loss was by accidental destruction of said book of registry in the year 1850, and that the same has never been among the archives in possession of the surveyor general of the U. States for California.

This admission to be used as part of the evidence in this case before said commissioners.

LOUIS BLANDING,
Asso. Law Agent.

Filed in office Jan. 3, 1855.
(Signed) GEO. FISHER, *Sect'y.*

Will.

En el nombre de la Santisima Trinidad, Dios, padre Dios hijo y Dios Espiritu Santo, tres personas destintas y un solo Dios verdadero de la purisima Virgen Maria.

Yo, José Joaquin Estudillo, natural de la Alta Calif'a, y vecino del condado de la Contra Costa, digo que hallandome gravamente enfermo pero en mi cutero y cabal Juicio en mis sentidos cabales por favor de la Divina Providencia, he dispuesto otorgar por el presente otorgo esta mi ultima voluntad testamentaria cuya tenor es el siguiente. Primeramente fallecido que sea mi cuerpo mando que se le de sepultura amortajada con el habito de nuestro padre S'n Francisco, en la punta de la Yglesia, de la mision de S'n José, y que se digan por sufragios de mi alma lo que mi esposa e hijos tengan a bien.

It. Declaro que en el año de mil ochocientos veinte y cuatro contraje matrimonio en el presidio de S'n Francisco, con D'n Juana Maria del Carmen Martinez, de cuyo matrimonio hemos tenido once hijos seis y cinco mugeres en la forma siguiente: Maria Conception tenida nacio en el presidio de S'n Francisco, el dia 12 de Ab'l, de 1824; José Ramon, el 28 de Feb'o, de 1827, en el mismo presidio de S'n Francisco; Maria de Jesus, el 5o de Enero, de 1829, en el presidio de S'n Diego; José Antonio, el 20 de Diciembre, de 1830, en el mismo presidio; José Maria, el 2 de Enero, de 1833, en el Pueblo de S'n José; Mario José Vicente, el 19 de Febrero, de 1831, en la mision de San José; José Luis, Junio, de 1836, en la merced Pinole; M'a Guadalupe, el 5o de Julio, de 1838, en la merced Pinole, y fallecio el 21 de Enero, de 1850; Maria Gertrudis Dolores, el 15 de Ab'l, de 1840, en la Contra Costa de S'n Leandro; Maria Magdalena, el 10 de Ab'l, de 1842, en la misma Contra Costa; Jesus Maria, el 30 de Junio, de 1844, en la Contra Costa; siendo el resultado de que de las onze hijos referridos dos son muertos y nueve quedan existentes.

It. Declaro tener en la actualidad en el rancho de S'n Leandro de dos a tres mil cabezas de ganado mayor ciento, y mas de ganado menor y cincuenta de todos clases.

It. Declaro haner tenido cuentas con algunos en mi contra justificalmente suan satisfechas por mis albaceas y principalmente con D'n Guillermo Eduardo Hartnell.

It. Declaro que de muchos años a esta parte mi son deudores varios particulares a quienes fue efectos del dicho S'r Hartnell, habiendo que pagar de mi bolsella pr. chancellas que siendo a mi favor las dudas que no haviendo comejado el paga siendo la causa de que unos proven

insolvencia, y otros tal vez por poberme no me huberen pagado por cuya causa todos quedan pudandas peron alguno testamento huvenien de entregar algunas cerutidades a mi alboceas les reconescan.

It. Declaro tener pendiente con D'n Pablo de la Portella, un arraglo de cuentas sobre varios cantidades que se de a favor de negocios de comercios cuyo arraglo pavan mas albaceas eniviendo los utiles dudes que resultan a mi favor.

It. Declaro que el Señor Agaton Reid, me es deudor de la suma de cuarenta pesos en plats ofreciendome pagar con una mala palomana que a me no ha entregado asi mismo dos juntas de buelles valor de trescientos pesos cuyas cantidades seran esposas de deudor.

It. Declaro a mi familia en possession dejar del terreno conocido con el nombre de rancho de S'n Leandro, comprendido aclmitro de las limites del arroyo de San Leandro, al de S'n Leandro y de las colinas de la lomeria del oriente á la Playa segun los titulos y demas devemitos relativos que lo comprenvan recondando a mis albaceas que arraglan sin pudida de tiempo o que respeten el que yo haverse con mi abagado encargado de negociar la notificacion correspondiente ante la comision de los Estados Unidos, y que hagan todos las demas gastos necesarios con los agri y demas que sean juicios hasta obtener la seguna y legal posesion de dicha propriedad.

It. Declaro dejar fincadas adentro de dicho rancho de San Leandro: 1o. Que la casa principal en que actualm'te vivo con mi familia. 2o. Sieto casas de madera situados a inmediaciones del embarcadero divi-dos en distirlos puritos.

It. Declaro dijar en defuentes puntos del rancho tres sembras de sevada en compania con D'n Guillermo Davis, una otra con los Mejicanos, y otra con los Sonorenos de cuyos contrates existen escrituras firmadas las que se tendran presentes condiciones estipuladas en ellas hasta la conterminacion.

It. Declaro dijar a mi esposa D'a Juana Martinez, una mitad del terreno del rancho de San Leandro, una otra mitad del ganado bacuno, diez caballos mansos, una mitad del ganado lanar todo el edificio de la casa en que actualmente vira con la familia con todos sus muebles enseres y demas utiles y existencias consernientes a ella.

It. Declaro que el resto de todos mis propriedades despues de separando la parte de mi esposa antes dicha quedaran a beneficio de todos mis hijos é hijas dividendose por iguales partes entre si con la dijenencia de que mi hijo José Ramon, apercivenan como mejores que le dijo a mas de la legitima que le corresponde cuarenta veces escapias por el mismo a mi satisfacion de la clace y calidad que el juretase, tomar en razon de haber sido mi dicho hijo el que mas asiduas trabajos y bien compartemiento trabajo en la fundacion del rancho y acustamiento de los ganados.

It. Recomiendo a mis albaceas que desde luego que mi hijo politico D'n Guillermo Davis, ejamina cantidad de dos cientos reces ó cinco mil pesos en plata que le dero como el quitar recivir le sea prontamente satisfechos una a otra casa segun le convengan cuya suma se sacara de

preferencia de la masa comun de bienes antes de la division de mi capital.

It. Dijo y nombro por tutora y procuradora unica de mis hijas é hijos menores a mi dicha esposa D'a Juana Martinez, con todos los poderos cumplios y legales comerciantes de ella.

It. Nombre por albaceas y ejecutores de este mi testamento en primer lugar a mi hijo politico D'n Guillermo Davis, y que segundo lugar a mi hijo legitimo D'n José Ramon, para que cumplan y ejecutan esta mi ultima voluntad testansentaria observando cuanto lleban ferido y que anden y dirijar en todos, los negocios esplicadas de la manera mas cumplida.

It. Declaro que es mi voluntad y pido a los tribunales y jueces que puedan conoser en este mi testamento ó administracion de mis bienes que a mi situdos Alraceas D'n Guillermo Davis y Don José Ramon Estudillo, no se les enija por franas en ningun tiempo otro menor mugu que la de cinco mil pesos solamente para cuyo efecto implora el favor de la ley. En fee de lo cual y por que las circumstancias unpiden de a la distancia en donde se encuentre un escribano publico que autorize este instrumento, ni suplicado a los individuos que se subscriben, lo hagan con ningun testimonio y firmado con mi mano, hoy dia cuatro de Abril, de mil ochocientos cincuenta, y dos en el rancho de San Leandro, en la Contra Costa, del puerto de San Francisco.

JOSE JOAQ'N ESTUDILLO.
JOSE JOAQUIN ESTUDILLO.

Testigo: JUAN B. ALVARADO.

It. Declaro que los dos cientos reces ó cinco mil pesos que deven pagarme a mi hijo politico D'n Guillermo Davis, es por razon de la casa que actualmente habita con mi familia.

JOSE JOAQ'N ESTUDILLO.
JOSE JOAQUIN ESTUDILLO.

Testigo: JUAN B. ALVARADO.

Firmado publicada y declarado por mi ultimo, testamento por José Joaquin Estudillo, el dia ocho de Abril de 1852, en presencia de nosotros estando todos puntos, en la presencia del dicho testador á cuyo suplico fermamos, y abstamos el dicho testamento sobre escrito como testigos al mismo, y a su pedimiento en mi presencia del mencionado José Joaquin Estudillo, y entre ambos testigos de dicho testamento.

WILLIAM W. SMITH,
W. R. BENJAMIN,
JOHN H. SAUNDERS.

I, Augustin M. Church, clerk of the county of Alameda, in the State of California, ex-officio clerk of the probate court of said county, do hereby certify that the foregoing is a correct and true copy of the last will and testament of José Joaquin Estudillo, together with all the en-

dorsements thereon, as the same remains with the files of said court in this office.

In witness whereof I hereto set my hand and affix the seal of said court, this 9th day of December, A. D. 1854.

A. M. CHURCH, *Clerk.*
By S. McCOMBES, *D. C.*

In the matter of the proof of the will of Joaquin Estudillo, deceased, before the probate court of Contra county, 29 Sept., 1852.

William M. Smith, one of the subscribing *witness* to the will of the deceased, being duly sworn, deposes and says that he recognises the instrument now in court to be the last will and testament of José Joaquin Estudillo; answers that he was present at the time and witnessed the execution thereof by the said testator: witness says that the testator was of sound mind, and was not under any restraint whatever, at the time of the execution of the said will—that the said will was made at the time in all particulars as required by law.

WM. M. SMITH.

I certify that the above proof of the last will of José Joaquin Estudillo was taken before, and subscribed before, me, this 29 day of September, 1852.

W. W. WORMCASTLE,
County Jus. Contra County.

Endorsed as follows, to wit: Proof of will. José Joaquim Estudillo Filed 29 Sept., 1852. Thomas A. Brown, Clerk.

Recorded 30th September, 1850, at 3 p. m., vol. 1 Book of Wills, Contra Costa County, page 25 to 32 inclusive. Thomas A. Brown, Clerk.

Filed Oct. 21st, 1853. A. M. Church, C'k C. C., by McCombs, d'y.

I, Augustus M. Church, clerk of Alameda county, in State of California, and ex officio clerk of the probate court of said county, do hereby certify the foregoing to be a true copy of the proof of the last will and testament of José Joaquin Estudillo, deceased, together with the endorsement thereon, as the same remains on file in my office.

Witness my hand, with the seal of office, at the probate court, affixed this 9th day of December, 1854.

Filed in office Dec. 16th, 1854.

GEO. FISHER, *Sec'ty.*

Translation of Will of José Joaquin Estudillo.

In the name of the most Holy Trinity, God the Father, God the Son, and God the Holy Ghost, three distinct persons and one true God, and of the Holy Virgin Mary.

I, José Joaquim Estudillo, a native of Upper California, and resident of the county of Contra Costa, declare, that finding myself dangerously ill, but in my entire and complete understanding and per-

fect senses through the mercy of Divine Providence, I have ordered and executed, as by these presents I do execute this my last will and testament, the tenor of which is as follows:

Firstly. When I shall have deceased, I commend that my body be interred, in the habit of our father St. Francis, at the door of the church of the mission of San José, and that such suffrages as my wife and children may deem proper be made for the benefit of my soul. Ditto. I declare that in the year 1824, I was married to Donna Juana Maria Del Carmon Martinez, at the presidio of San Francisco, in which wedlock we have had eleven children, six sons and five daughters, in the following order: Maria Conception was born at the presidio of San Francisco, on the 12th day of April, 1824; José Ramon on the 28th day of February, 1827, at the said presidio of San Francisco; Maria de Jesus on the 5th of July, 1829, at the presidio of San Diego; José Antonio on the 20th day of December, 1830, at the same presidio; José Maria on the 2d of January, 1833, at the pueblo of S. José, deceased; José Vicente on the 19th of February, 1834, at the mission of San José; José Louis of June, 1836, at the Merced Pinolo; Maria Guadaloupe on the 5th of July, 1838, at the Merced Pinolo, and died on the 21st of January, 1850; Mina Gertrude Dolores on the 15th of April, 1840, in Contra Costa of San Leandro; Maria Magdelena on the 10th of April, 1842, in the said Contra Costa; and Jesus Ma. on the 30th of June, 1844, in Contra Costa; the result being that of the eleven aforesaid children two are dead and nine remain living.

I declare that at the present time I have on the rancho of San Leandro from two thousand to three thousand head of cattle, and more than that number of sheep, and fifty horses of all classes. Ditto. I declare that I have had accounts with a few merchants, with whom I have settled; but if by casualty any shall appear against me, properly proven, they shall be paid by my executors, and particularly with Don Guillermo Edward Hartnell. Ditto. I declare that from many years ago to the present time, sundry individuals owe me, to whom I credited goods of the said Señor Hartnell, having had to pay from my own purse to settle them. The debts remaining in my favor, and not having received the payment, the cause being that some for their insolvency, and others perhaps through poverty, had not paid me, therefore they all remain pardoned; and if any of them should voluntarily deliver any amounts to my executors, they may receive them. Ditto. I declare that I have pending with Don Pablo de la Portilla a settlement of accounts relative to sundry amounts, which I furnished him for the carrying on of a mercantile business, which settlement my executors will make, exhibiting the amounts which may be in my favor.

Ditto. I declare that Augustin Reid owes me the sum of forty dollars in silver, offering to pay me with a white mule, which he has not yet delivered; also, ten (10) yokes of oxen, which amounts

* * * * * * * * * * * * *

[Can't be read—Translator.]

Ditto. I declare that I leave my family in the possession of the tract of land known by the name of rancho de San Leandro, embraced between the arroyo of San Leandro on San Lorenzo, and from the colinas of *of* the hills on the east to the beach, according to the titles and other documents relative thereto, which corroborate, recommending my executors to arrange without delay or respect, that which I should make with my attorney, charged with the negotiating of the proper conformation thereof before the United States commissioners, and that they pay all the necessary expenses of surveyors, and all others which may be necessary to obtain and secure the legal possession of said property.

Ditto. I declare that I have established upon said rancho de San Leandro, first, the dwelling-house in which my family actually lives; second, seven frame houses situated at different points near the embarcadero.

Ditto. I declare that I leave at different places on the rancho three fields sown in barley, in company with Don Guillermo Davis—one with the Mexicans, and another with the Sonorians—of which contracts exist, written agreements signed, which shall be produced, and they "conramacina."

Ditto. I declare that I leave to my wife Donna Juanna Martinez one-half of the land of the rancho de San Leandro, one-half of the cattle, ten tame horses, one-half of the sheep, the whole of the edifice of the house in which she actually resides with the family, with all its movables, furniture, and other utensils and appurtenances thereto belonging.

Ditto. I declare that the remainder of all my property, after separating the part of my aforesaid wife, shall *muren* to the benefit of my sons and daughters, to be divided equally between , with the difference, that my son José Ramon shall receive as "mymas," which I leave him besides his respective portion, forty head of cattle, by him to be selected to his satisfaction, of the kind and quality which he shall be pleased to take, in consideration of my said son's having been the one who, with assiduous toil and good behavior, labored in the foundation of the rancho, and the augmentation of the herds.

Ditto. I recommend my executors that whenever my son-in-law, Don Guillermo Davis, demands the number of two hundred head of cattle, or five thousand dollars in silver, which I owe him, as he shall choose to receive it, it be punctually paid to the satisfaction of all parties as they may agree, which sum, with preference, shall be taken from the common mass of the property, previous to the division of my estate.

Ditto. I leave and appoint my said wife, Donna Juanna Martinez, as the sole tutoress and guardianess of my minor sons and daughters, with all the full and legal powers thereunto belonging.

Ditto. As albacos and executors of this my last will, I appoint in the first place my legitimate son, Don José Ramon, in order that they may fulfil and execute this my last will and testament, observing

everything herein before mentioned; and that they attend to and direct all the *baseness* herein specified in the most satisfactory manner.

Ditto. I declare that it is my will, and I beg of the courts and justices who may take cognizance of this my testament, or the administration of my estate, that my said albacias, Don Guillermo Davis and Don José Ramon Estudillo, may not be required to give security in a greater amount than that of only five thousand dollars, to which effect I have the favor of the law.

In testimony whereof, and because circumstances prevent my going the distance to appear before a notary public to authenticate this instrument, I have requested the undersigned individuals to attest it with me, and subscribe my name hereunto, this fourth day of April, one thousand eight hundred and fifty, at the rancho de San Leandro, in the Contra Costa of the port of San Francisco.

(Signed) JOSE JOAQUIN ESTUDILLO.
(Signed) JOSE JOAQUIN ESTUDILLO.

Witness: (Signed) JUAN B. ALVARADO.

Ditto. I declare that the two hundred head of cattle, or five thousand dollars, which ought to be paid to my son-in-law, Don Guillermo Davis, were caused in account of the house in which I actually live with my family.

(Signed) JOSE JOAQUIN ESTUDILLO.
(Signed) JOSE JOAQUIN ESTUDILLO.

Witness: (Signed) JUAN B. ALVARADO.

Signed, published, and declared as his last will and testament of José Joaquim Estudillo, on the eighth day of April, one thousand eight hundred and fifty-two, in our presence, being all of us together, and in the presence of the said testator, and we witnessed the above written testament at the solicitation of the said José Joaquin Estudillo in his presence, but the witnesses of this instrument.

(Signed) W. W. SMITH,
(Signed) W. R. BENJAMIN,
(Signed) JOHN H. SAUNDERS.

I, George Fisher, secretary to the U. S. land commission to ascertain and settle private land claims in the State of California, hereby certify the foregoing to be a true and correct translation of a document in case No. 256, José Joaquim Estudillo vs. United States, for the place named "San Leandro," now on file in this office.

In testimony whereof I have hereunto signed my name at office, at the city of San Francisco, Cal., this second day of Jan'y, A. D. 1855.

[SEAL.]

(Signed) GEO. FISHER, *Sect'y.*

Filed in office Jan. 2, 1855.

(Signed) GEO. FISHER, *Sect'y.*

Esped'te.

1. Espediente de Don Guillermo Castro, donde se le ha permitido sembrar en el parage de San Leandro.—1840.

2. Prefectura del 1a Distrito.

El juez de paz de Sn. José de Alvarado, en officio, de 8 de Diciembre, po. po. me dice lo siguiente: En complimiento de la orden de V. S. de 6 del po. po., para que se nombrase una persona que le vantara el plano del terreno de S. Leandro solicitado por los C. C. Guillermo Castro y Joaquin Estudillo y que le acompañase al efecto; fué nombrado el C. José Z. Fernandez quien en mi compañia y los interesados lo verifico cuyo plan remito a V. S. dividido en longitud y latitud por que irregularidad de figure no permite que se hage una exacta division sin perjudicar a algunos de las partes por lo tanto.

3. Le ha parecido al Repitido Fernandez hacer la de los dos modos indicados para que el gobierno en su vista resuelva lo que crea por mas convint'e habiendo importado este gasto concuenta pesos qe. deben satisfacer por iguales partes los interesados, al trascribirlo a V. S. para conocim'to de S. E. el s'or gobernador del departamento; lo remita el plan referido y le reitero las sejuridades de mi aprecio.

Dios y libertad Sr. Juan de Castro Enero 7, de 1840.

JOSE CASTRO,

S'or Secretario del Gobierno del Departam'to.

En 14 de Enro, 1840, que se puede establecer al Sr. Dn. Guillermo Castro en el paraje de Sr. Leandro pr. la parte de las lomerias sin traepasar la linea que de norte a son formeno los ajuajes de dicho sitio; pidiendo hacer sus labores en que les quita parte de todo el terreno de Sr Leandro. Entendiendose esta consecion provicional'te hasta qe. el gob'no aregle los linderos que le corresponden al S'or Estudillo actualm'te establicido en dicho sitio y si perjudica alli establicidos.

OFFICE OF THE SURVEYOR GENERAL OF THE
UNITED STATES FOR CALIFORNIA.

I, John C. Hays, surveyor general of the United States for the State of California, and as such having in my office, and in my charge and custody, a portion of the archives of the former Spanish and Mexican territory, or department of Upper California, by virtue of the power vested in me by law, do hereby certify, that the three preceding and hereunto annexed pages of tracing paper, numbered from one to three inclusive, exhibit a true and accurate copy of a certain document now on file and forming part of the said archives in this office.

In testimony whereof I have hereunto signed my name officially, and caused my seal of office to be affixed, at the city of San [SEAL.] Francisco, on this twelfth day of December, 1854.

JOHN C. HAYS,

U. S. Surveyor General for California.

Filed in office Dec. 16th, 1854.

GEO. FISHER, *Sect'y.*

Expediente—Translation.

Espediente of Don Guillermo Castro, wherein he has been permitted to plant upon the site of "San Leandro"—1840.

Prefecture of the First District.

The justice of the peace of San José de Alvarado, in a communication of 8th December last, writes me the following:

In compliance with the order of your excellency of the 6th inst., to appoint a person to draw a plan of the land of San Leandro, solicited by citizens Guillermo Castro and Joaquim Estudillo, and that it should be accompanied for that purpose, citizen José Z. Fernandez was appointed, who, in company with myself and the interested parties, drew it, which place I transmit to your excellency, divided in length and width, because *of* the inequality of the form thereof does not permit an exact division to be made with out prejudice to some of the parties; wherefore to the said Fernandez it has appeared proper to do it in the two ways indicated, in order that the governor, in view thereof, may determine whatever he may deem proper, the expense thereof having amounted to fifty dollars, which should be equally shared by the interested parties.

In transcribing it to your excellency señor governor, I transmit to you the aforesaid mentioned plan, and repeat to you the assurances of my esteem.

God and Liberty. SAN JOSE DE CASTRO.

Jan'y 7th, 1840.

(Signed) JOSE CASTRO.

Marginal Decree.

To the Secretary of State of the Department:

Jan'y 14th, 1840.

Don Guillermo Castro can establish himself upon the place called San Leandro, on the part towards the hills, without passing beyond the line from north to south, formed by the springs on said place, not being permitted to make his fields in whatever part of all the land of "San Leandro;" this concession being understood provisionally until the governor may settle the boundaries which belong to Señor José Estudillo, who is actually established on the said site, and without prejudice to the Indians living thereon.

I, George Fisher, secretary to the U. S. land commission to ascertain and settle private land claims in the State of California, do hereby certify the foregoing to be a true and correct translation of a Spanish document, in case No. 256 on the docket of said commission, now on file in this office.

In testimony whereof, I have hereunto signed my name at office at the city of San Francisco, Cal., this 2d day of January, A. D. 1855.

(Signed) GEO. FISHER, *Sect'y.*

Filed in office Jan. 2, 1855.

(Signed) GEO. FISHER, *Secret'y.*

C.—Permit.

Exhibit No. 1, *A. F., annexed to the Deposition of Juan B. Alvarado, Nov'r* 11, 1853.

A Don Joaquin Estudillo no se le perjudicara en sus lanores ni deneas ocupaciones en el lugar en que se alla, de la parte del parage de San Leandro hasta que el gobierno determino lo conveniente.

Monterey, Agt'o 16, de 1839.

MANUEL JIMENO.

Translation.

Dn. Joaquin Estudillo shall not be disturbed in his works and occupation on the land where he now is and the tract of San Leandro, until the government shall determine what shall be done.

Monterey, August 16, de 1839.

Copy. MANUEL JIMENO.

Filed in office May 31st, 1852.

GEO. FISHER, *Sec'y.*

Petition to set aside Decree and open the Case.

Board of U. S. Land Commission.

THE HEIRS OF JOSE J. ESTUDILLO
vs.
THE UNITED STATES. } No. 256.

The petition of J. H. McKune, law agent of the United States, *respectively* shows, that in the above case, wherein a decree of confirmation was entered on the 9th day of January, 1855, the question was made and decided as to the admissibility of ex parte depositions of affidavit of J. B. Ward, in proof of the laws of the grant, and in deciding such question in favor of the admissibility of said affidavit, this board put the same upon the ground that it was properly receivable, because said Ward was a party to this suit, whereas in law and in fact said Ward is not a party to the suit, nor can he take any interest or benefit under the decree entered herein; thus it is true, that his name stands upon the record as a party claimant, but he has shown no interest in the lands claimed, and is only drawn into the case as an appendage in the character of a husband to one of the daughters of the deceased, José J. Estudillo, said daughter taking in her own right and as her own separate property her share in the said estate, by virtue of the 1st section of an act of the legislature of this State, defining the rights of husband and wife, passed April 19th, 1850, and found on page 812 of the Compiled Laws of the State of California. This petitioner therefore prays that the decree entered herein may be set aside and the cause again taken under advisement; because, 1st, the decree of confirmation has been improperly entered in the names and in favor of J. B. Ward and W. H. Davis, whose only claim thereto was in their char-

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acter of husbands. 2d. Because John B. Ward not being a legal party to the suit, not make and file an ex parte affidavit of the loss of the grant. This petitioner further hereby asserts, *if that* this board shall so determine, the submission may be set aside, with leave to within party to take testimony generally in the case.

J. H. McKUNE, *Law Agent.*

Filed in office Jan. 30th, 1855.

GEO. FISHER, *Sec'y.*

Opinion by Commissioner Felch.

HEIRS OF JOSE JOAQUIM ESTUDILLO
vs.
THE UNITED STATES.

For the place called "San Leandro," in Alameda county, containing one square league of land.

José Joaquim Estudillo, who originally presented this claim to the commission, having deceased, the proceedings are now continued in the name of his widow and his children, who are his legal representatives.

The land is claimed under a grant alleged to have been made to said José Joaquin Estudillo by Governor Juan B. Alvorado, on the sixteenth day of February, 1842. It is also alleged on the petition that said Estudillo obtained an official permit to settle on said land in August, 1839; that he then went into possession of the premises, and from that time continued to occupy and possess the same as the lawful owner.

The title to the land as set out in the petition is clearly claimed under the grant above mentioned. That document is not produced in evidence, but secondary proof of its contents is presented.

The first inquiry is, whether the claimants have given sufficient proof of the existence and loss of the original, and when this is done, whether its contents are sufficiently proved by competent secondary evidence.

To show the loss of the grant the affidavit of John C. Ward is filed, in which he swears that the grant or title was in possession of the original claimant before this board, and among the papers relating to his claim down to the time of his death; that after his death said original grant came into the possession of the affiant, who married one of the daughters of the deceased, and is a party in this case; that said grant was casually lost by him with many of his own private papers; that he had made diligent search for the document wherever he could reasonably suppose it might be, without success, and has no doubt that the same is irretrievably lost.

It is objected that a mere affidavit by a party of this loss of an instrument is insufficient; that the proof should be taken in the form of other testimony by oral examination in open court, or by deposition, so that the opposite party might be present and cross-examine the witness.

If the fact of the loss or destruction of a paper needed on a trial is to be regarded simply in the character of a material part of the claimant's case, the manner of taking the testimony and the competency of the witness must be the same as are required generally by the law applicable to evidence.

But proof of the loss or destruction of an instrument for the purpose of letting in secondary evidence of its contents is not so regarded. The contents of the instrument is the material fact to be proved, but the question whether that can be permitted to be shown by any evidence short of the production of the document itself, is one which is auxiliary merely to the trial, not involving the matter in controversy, and is committed to the sound discretion of the court, and for this purpose the affidavit of the party has been held sufficient.

In Taylor vs. Riggs, (1 Rt. Rep., 591,) Chief Justice Marshall, delivering the opinion of the court, has discussed the question fully, and held such affidavit to he sufficient. The principle has been received and applied by the supreme court of this State in McCown vs. Beach, (2 Cal. R., 25,) and is generally recognised as the rule of practice in the courts of the several States of the Union. (See cases cited, 4 Phil. Ev.; C. & Hill's notes, 1219.)

Where the proof of the loss or destruction of the instrument is sought to be made by a person who is a competent witness in the case, there may be a question whether his statement should not be taken in the usual form and manner of giving testimony, and of cause subject to cross-examination, (Porgnard vs. Smith and Rich, Rep., 278,) but it cannot be doubted that a party to the record (as is the affiant in this case) competent to establish the fact of the loss of the paper, and that his affidavit taken out of a court is sufficient.

The affidavit of Ward shows that the document came to his hands after the decease of the grantee, and was casually lost by him with other papers of his own, and that he had sought for but could not find it, and had no doubt that it was irretrievably lost. This statement destroys the presumption that it *contained* among the papers of the deceased. The circumstances of the loss are not very fully stated in the affidavit, but the subsequent testimony taken by the government on this subject brings *brings* out a more fuller explanation of them as given by the affidavit.

This testimony does not, in my opinion, impeach the correctness of the proof of the loss of the document as contained in the affidavit, but tends rather to make it more explicit and circumstantial. We think this proof sufficient to establish the loss of the document, and to let in secondary evidence of its contents.

The deposition of Juan B. Alvarado fully proves the issuing of the grant by him, duly signed by himself as governor, and by Jimeno, his secretary, and its delivery to the grantee.

A traced copy of the expediente in the archives deposited with the surveyor general is given in evidence, showing the proceedings on the application for the grant, and closing with a draught of a grant in accordance with a prayer of the petition.

This last document is without signatures, and does not purport to be a completed instrument to be delivered to the grantee, nor is it the record of a grant which has been thus delivered.

It is in fact the rough draught of the grant ordered by the governor, made out by the clerk, and attached to the other paper constituting the expediente.

The grant delivered to the party was usually copied from the rough draught, sometimes being an exact copy of it, and sometimes departing from it. Phraseology and tenor as alterations or amendment may be suggested.

We have never considered this document, which is often found attached to the expediente, as proof that any grant was issued to the person named in it as grantee, nor when such grant is proved to have issued have we regarded this document as a copy or proof of itself of the contents of the grant which was delivered.

In its main features it is undoubtedly usually similar to the grant delivered to the party, but it has none of the features of an official instrument or record by which it can be properly treated as a true copy. In the case before us, Governor Alvarado testifies that he has examined this document in the archives, and that it is identical in all respects, except that the signatures are wanting with the title-paper signed by him and delivered to Estudillo.

He says he knows it because he was very intimate with the grantee's family, and all his concerns, and had often examined the paper; that he saw the original title-paper in the grantee's hands after it was executed and delivered to him, and that the document in the archives, of which a traced copy is filed in the case, is a true copy of that original.

This testimony is not contradicted, and is too explicit to admit of cavil. The issuing of the grant by the governor, and the accuracy of the copy thus given in evidence, must be considered as established by the proof.

The testimony shows that said Estudillo was established on the premises previous to August, 1839, at which time he obtained a written order that he should not be disturbed in his possession until the government should decide on his application for a grant, and that he continued to live upon and cultivate the premises until his death. No approval of the departmental assembly is proved, and no judicial measurement of the land appears to have taken place.

The original petition to the governor was for the grant of four square leagues of land, extending four leagues back from the bay.

The governor declined to concede the entire premises solicited, but, as the grant specifies, that he concedes only a part of the land, the boundaries of which are defined with sufficient accuracy for its designation.

These boundaries are as follows: On the north, the aroya of San Leandro; on the east, the places where the waters from the springs on the lands which the Indians now established there occupy, waste themselves, (arramude;) thence on the south, by a direct line to the arroyo

de San Lorenzo, without embracing the lands which the said Indians cultivate, and the bay (mar.)

The map attached to the expediente and referred to in the grant exhibits the objects mentioned in this description with sufficient certainty of location.

The bay on the west, the arroyo San Leandro on the north, and the San Lorenzo on the south, cannot be mistaken as boundaries.

The springs from which issue small streams of water soon losing themselves by absorption in the earth, are laid down, and their existence, as well as that of the Indians' residences and cultivation, is proved by the testimony of witnesses.

The rear line of the premises described in the grant, then, is that which is marked on the map in the expediente, running through the places where the water from the two springs delineated in said map waste themselves (demamadan), and extending north to the San Leandro; and from the southern extremity of this line at the waters of said springs the line is run in a direct course to the San Lorenzo creek.

This portion of the boundary is designated in the grant as being on the southern boundary, and also as running in such a manner as to exclude the cultivations of the Indians. The precise point where it strikes the San Lorenzo is not given, but it was evidently expected by the gov. that instead of continuing beyond the spring without an angle to the San Lorenzo, it should deflect at the springs towards the west, and striking the cultivated lands of the Indians, excluding the same, should run by a direct course to said stream, and thence down the stream to the waters of the bay.

The land included within these boundaries was clearly supposed at the time the grant was made to contain one square league of land, a little more or less, and from the testimony of the witness Stratton, who made a partial survey of said rancho, the quantity would seem not to vary materially from that specified.

If this statement is correct, it is probable that when the lines are run as above indicated, the quantity will fall short of, rather than exceed that designated.

The eastern line of the premises as above indicated is different from that mentioned by several of the witnesses as the boundary on that side.

A map is also presented which exhibits a line much further to the east, and runs along the hills, including all the land grounds, the springs, and the cultivated land of the Indians, within the limits of the Estudillo ranch.

By the testimony of José Castro, it is made to appear that a controversy arose between Estudillo and Guillermo Castro, the occupant of the adjoining rancho, in reference to this line; and before either of them obtained his grant, the dispute was referred by the governor to José Castro to designate the line which should be adopted in making the grants.

He decided the question by arranging the line which appears on the

map attached to his deposition, and he swears that this map was presented to the governor before Estudillo's grant was issued, and that the governor informed him that he had adopted this line as a boundary. But it is certain that this is not the map referred to in the grant; that map is attached to the expediente, and was retained in the archives as constituting a part of the description of land granted, while that identified by Castro was allowed to be taken away because is not adopted as a delineation of the land granted, and could not, therefore, be properly retained as descriptive thereof.

The boundaries on the east, adopted by the governor, are specified in the grant, but they are entirely different than that running along the hill-tops, and laid down on Castro's map.

The latter embraces the springs, and the cultivated lands and habitation of the Indians, while the express terms of the grant exclude these from the area of the land granted. It is impossible to adopt the line laid down by Castro without contradicting the terms of the grant itself, by which the limit of the land is fixed much nearer to the coast of the bay.

The line laid down on the map attached to the expediente, I have no question, exhibits correctly the boundary as far south as the southern border of the waters running from the springs, and from this point deflecting towards the west so as to touch the western limits of the land, at that time cultivated by the Indians, and continuing from the angle thereof in a straight line until it strikes the arroyo of San Lorenzo. If by chance it should be found that the cultivated grounds of the Indians are not so situated as to cause a deflection of the line when run as above mentioned, at the waters of the spring, the same will be continued without angle to the San Lorenzo, thus *thus* making the eastern boundary of the ranch a straight line.

Several other objections to a confirmation are urged in the brief filed on behalf of the government, but on a careful examination of points presented, and of the evidence in the case, we think none of them are well taken. It is not necessary to advert more particularly to them.

It is the opinion of the commission that the claim is sustained by the evidence to the extent of the area above mentioned, and a decree will be entered confirming it with the boundaries before specified.

Confirmed.

Filed in office January 9, 1855.

(Signed) GEO. FISHER, *Sec'y*.

Decree.

HEIRS OF JOSE JOAQUIN ESTUDILLO
vs.
THE UNITED STATES.

In this case, on hearing the proofs and allegations, it is adjudged by the commission that the claim of the said petitioners, the widow and the heirs at law of José Joaquim Estudillo, deceased, is valid, and it is

therefore decreed that the same be confirmed, the said widow and heirs to have and to hold the premises hereby confirmed to them in the several interests and proportions to which they are respect*fully* entitled by law in the estate of said deceased.

The land of which confirmation is hereby made is situated in Alameda county, and known as a part of the place called San Leandro, and is the same granted to and formally occupied by said José Joaquim Estudillo, and is bounded and described as follows, to wit:

Bounded on the north by the arroyo of San Leandro, on the west by the bay (mar,) on the east by a line drawn from the San Leandro creek, southerly through the places where the waters from the springs on the lands which the Indians established there in 1842 occupied, waste themselves (derromadores,) and on the south by a straight line from the termination of the line last mentioned, at the waters of said springs, down to the arroyo of San Lorenzo, in such manner as to touch and exclude the lands which said Indians cultivated, and thence by said arroyo to the bay, being the same land granted to said Estudillo; reference for further description to be had to the expediente, and map constituting a part of the same, a traced copy of which is on file in this case; and if it shall be found by running the lines as above mentioned, making a deflection towards the west at the waters of said springs, the same will not touch any portion of the said cultivated lands of the Indians, then the eastern line of said premises shall be continued southerly in a direct course to said arroyo of San Lorenzo, and without making an angle at said waters.

ALPHEUS FELCH,
R. AUG. THOMPSON.

Filed in office Jan. 9, 1855.
(Signed) GEO. FISHER, *Sect'y.*

And it appearing to the satisfaction of this board that the lands hereby adjudicated is situated in the northern district of California, it is hereby ordered that the transcript of the proceedings and of the division in this case, the papers and evidence upon which the same are founded, be made out and duly certified by the secretary, one of which transcripts shall be filed with the clerk of the United States district court for the northern district of California, and the other to be transmitted to the Attorney General of the United States.

OFFICE OF THE BOARD OF COMM'S
To ascertain and settle private land claims in the State of California.

I, George Fisher, secretary to the board of commissioners to ascertain and settle the private land claims in the State of California, do hereby certify the foregoing one hundred and two pages, numbered from 1 to 102, both inclusive, to contain a true, correct, and full transcript of the record of the proceedings, and of the decision of the said board, of the documentary evidence, and of the testimony of the witnesses upon which the same is founded, on file in this office in case No. 256 on the

docket of the said board, wherein José Joaquin Estudillo is the claimant against the United States, for the place known by the name of "San Leandro."

In testimony whereof, I hereunto set my hand and affix my private seal (not having a seal of office) at San Francisco, California, [SEAL.] this seventh day of July, A. D. 1855, and of the independence of the United States of America the eightieth.

(Signed) GEO. FISHER, *Sect'y.*

Endorsed: Filed July 7th, 1855.

JNO. A. MONROE, *Clerk.*

Notice of Appeal in Case No. 256.

OFFICE OF THE ATTORNEY GENERAL OF THE UNITED STATES,
Washington, 10 *October*, 1855.

256.—San Leandro—José Joaquin Estudillo, Claimant.

You will please take notice, that in the above case decided by the commissioners to ascertain and settle private land claims in the State of California, in favor of the claimant, and a transcript of the proceedings in which was received in this office on the 1st day of August, 1855, the appeal in the district court of the United States for the northern district of California will be prosecuted by the United States.

C. CUSHING, *Attorney General.*

Endorsed: Filed January 2d, 1856.

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Petition of Appellants.

To the honorable District Court of the United States in and for the northern district of California:

THE UNITED STATES, Appellants,
vs.
JOSE JOAQUIN ESTUDILLO. } 234.— San Leandro.

The petition of the United States, by their attorney, represents, that this cause is an application for a review of the decision of the board of commissioners, whereby the claim of the said appellee was confirmed, as appears by reference to the records in the case; that a transcript of the said records was filed in this court on the 7th day of July, 1855; that a notice of appeal was filed on the 2d day of January, 1856, and that the land claimed lies in the said district; that the said claim is invalid; wherefore appellants pray that the said decision of the board be reversed, and that this court decree the said title to be invalid.

Respectfully, &c.,

S. W. INGE, *U. S. District Att'y.*

Endorsed: Filed Feb'y 11th, 1856.

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Answer of Appellee.

In the United States District Court for the northern district of California. Appeal from the Board of Commissioners.

THE UNITED STATES, Appellants,
vs.
JOSE JOAQUIN ESTUDILLO, Appellee. } No. 234.—San Leandro.

José Joaquin Estudillo, the appellee in the above cause, for answer to the petition of the appellants, admits the filing of the transcript and notices of appeal as stated in the said petition, and that the land claimed lies in the said district.

Said Estudillo denies that his claim to the said land is invalid, and alleges that his said claim is valid, and prays that the decision of the board be affirmed, and that this court decree the said title to be valid.

SAUNDERS & HEPBURN,
For Appellee.

Endorsed: Filed Feb'y 11th, 1856.
JOHN A. MONROE, *Clerk.*
By W. H. CHEEVER, *Deputy.*

(*For map see original, page* 101.)

Deposition of N. B. Smith.

UNITED STATES DISTRICT COURT,
Northern District of California.

THE UNITED STATES
vs.
JOSE JOAQUIN ESTUDILLO.

SAN FRANCISCO, *March 19th*, 1856.

On this day before me, George Pen Johnston, a commissioner of the United States for the districts of California, duly authorized to administer oaths, &c., &c., came N. B. Smith, José Maria Amador, Ephraim Fravel, and Nicholas Gray, witnesses produced on behalf of the United States in case No 234, being an appeal from the board of commissioners to ascertain and settle private land claims in the State of California, in case No. 256 on the docket of the said board of commissioners, and was duly sworn and testified as follows: the evidence of José Maria Amador being interpreted by E. C. Palmer and D. W. C. Palmer, sworn interpreters.

Present, the acting U. S. district att'y on behalf of the United States, Saunders and Hepburn on behalf of the claimant and appellee.

Questions by the U. S. District Att'y.

What is your name, age, and place of residence?

My name is Napoleon B. Smith; my age is thirty-eight years, and I reside in Martinez, Contra Costa county, California. I came to California in 1845, and have resided here ever since. I have resided in Contra Costa and Santa Clara counties. I was acquainted with José Joaquin Estudillo; I knew him from the early part of 1846 until the year of his death. I don't recollect exactly what time he died—some two or three years ago, I believe.

[The U. S. dist. att'y offers a map to be attached to the deposition, marked A—G. P. J., which is objected to by att'y for claimant.]

Look on the map now shown you and state whether you are acquainted with the country delineated on said map.

I am. I have known the country since the early part of 1846. Don José J. Estudillo lived on San Leandro creek in 1846, as laid down on the map; he afterwards moved farther up the creek, where the town of San Leandro now is, or in that neighborhood, about a half or three quarters of a mile from the place where he first lived. I think the house marked on the map on San Leandro creek is about the place where Estudillo last lived. There were no persons in 1846 living between San Lorenzo creek and San Leandro (as designated on the map) except Indians.

Look at the map and state where the Indians lived, or had their possessions, of whom you speak.

[Objected to by att'y for claimant, on the grounds that it is a leading question; because the locality asked about is already designated on the map.]

The principal portion of the Indians lived in the locality marked on the map "springs and willows," and they cultivated the land further down in the valley. I don't recollect in what year or years it was, but after 1846, and about that time, there were other Indians scattered about, living on San Lorenzo creek, and about there; had their little fields, &c., &c. The nearest fields cultivated by the Indians were about a mile from the bay, as well as I can recollect. It is hard to tell by the appearance of the fields how long they had been cultivated.

How near to the line represented on the map as the "agreed line between Estudillo and Indians" was the nearest field cultivated by the Indians?

[Objected to by claimant's att'y.]

There was a corral near that line which an old Indian named Sylvestero told me belonged to him.

Did you ever have any conversation with Estudillo during his lifetime with regard to the boundary between him and the Indians?

I have had, or did have, in 1847. I tried to purchase the Indian's possessions; he showed (that is, Sylvestro showed) me the line which he said existed between him and Estudillo. I then went to Estudillo and had some conversation with him about the matter; he said the Indians had the right to possession from the government, but had no title

to the land. I asked him where the division line was, and he told me that the Indians claimed to about the line represented on the map as the "agreed line between Estudillo and the Indians."

Did Estudillo refer in that conversation to any natural objects on the face of the earth, by which the line spoken of could be located or described?

[Objected to by claimant's att'y, on the ground that it is intended to contradict the grant.]

I pointed out a rock on the side of the mountain, and told Estudillo that the Indian, Sylvestro, had shown me that as the commencement of the line between them; that the line began at that point and went in a direct course to the bay, at a place where there are some little sand hills, with strawberries growing on them—a place called in Spanish "Madulses;" I never was at that strawberry patch until I went there with the surveyor to show him the place which had been pointed out to me as the termination of the line spoken of; I could see the rock on the hill, about which I have spoken, from the strawberry patch; I know them to be the two points which were pointed out to me by the Indian, and afterwards pointed out by me to Estudillo, who acknowledged that the Indian claimed according to that line.

From your knowledge of the country, would you say those two points are exactly designated on the map?

[Objected to by claimant's attorney, on the grounds that the question is leading.]

I should think they were.

Cross-examination by Claimant's Attorney.

What was your knowledge of the Spanish at the time of the conversation with Estudillo, and was that conversation in Spanish?

The conversation was in Spanish, and I could speak some little Spanish at that time.

Direct Examination resumed.

Could you understand Spanish sufficiently well at that time to know what Estudillo said to you?

I could understand him, and I think I made him understand me.

N. B. SMITH.

Sworn and subscribed before me this 19th day of March, A. D. 1856.

GEO. PEN JOHNSTON,
U. S. Commissioner.

Deposition of José Maria Amador.

José Maria Amador, being duly sworn, deposes and says as follows, his evidence being interpreted by E. C. Palmer, a sworn interpreter.

Question by U. S. Dist. Att'y.

What is your name, age, and place of residence?

Answer. My age is 65 years; my name is José Maria Amador; I reside

at the mission of San José; I have lived in California ever since I was born.

Question. Were you ever administrator of the mission of San José? if so, state the years.

Answer. I was administrator of the mission of San José in the year 1840, for one year.

Question. Look upon the map now shown you, marked A, and annexed to the deposition of N. B. Smith, and state whether you are acquainted with the country designated on said map?

Answer. I am acquainted with the land designated on said map.

Question. Do you know who resided on said land during the years 1841 and 1842?

Answer. During the years 1841, 1842, and 1843, two brothers, who were Indians, named Anisett and Sylvestro, resided on the lands, and about twenty other Indians, who were relatives.

[D. W. C. Palmer was here sworn as interpreter; E. C. Palmer being unable to attend longer.]

Question. Can you designate on the said map the respective locations and cultivated spots of said Indians, in the years 1841 and 1842?

[Question objected to by the claimant's attorney.]

Answer. I can. The remains of an adobe house within the yellow lines, a corral to the southward of the house, a small vineyard to the northward; also some trees on the side of the house; wheat patches, two in number, and near the willows a vegetable garden. The wheat patches are designated on the map as "wheat fields of Indians, 1841 and '42."

Question. Do you know of any other improvements made by the Indians, corrals or cultivation of any kind; and if so, designate their location on the map?

[Question objected to by the claimant's attorney.]

Ans. I know of no more.

Ques. Did you know of any corral below the old San José road belonging to the Indians, in the years 1841 and '42?

Ans. There were two more small corrals; one below the house near the main road, another within the willows.

Ques. Can you designate on the map the location of the corral below the house, or the one nearest to the bay?

[Objected to by the claimant's attorney.]

Answer. It was situated to the northward and westward from the house, and designated on the map as "Old corral of the Indians," close to the main road to San José. It was situated between the two roads.

Ques. Had the Indians any cattle or horses, during the years 1841 and '42, between the yellow lines?

Ans. They had some five or six tame horses, three yoke of oxen, and some six or eight cows.

Ques. How long did the Indians occupy the said lands?

Ans. They occupied them from the year 1829 until the present time.

his
JOSE MARIA ⋈ AMADOR.
mark.

Sworn and subscribed to before me, this 19th day of March, 1856.

GEO. PEN JOHNSTON,
U. S. Commissioner.

Deposition of Ephraim Fravel.

Ephraim Fravel, being duly sworn, deposes and says as follows:

Questions by U. S. Dist. Att'y.

What is your name, age, and place of residence?

My name is Ephraim Fravel; my age is forty-six years; and my place of residence is San José, California. I have lived in California since the year 1833.

Look on the map marked A—G. P. J., attached to the deposition of N. B. Smith, and state whether you are acquainted with the country designated on the map?

I am. Between the San Leandro and San Lorenzo creeks, the Indians living there about the years 1841 and '42, and before and after that time, whom I knew, were Sylvestro and his brother; there were various other Indians living there whom I did not know particularly. The Indians had made improvements there and had cultivated the land; there was a little house there on the right side of the public road, going up from San Pablo to the mission of San José; they produced (that is, the Indians) corn, beans, pumpkins, wheat, &c.; the wheat fields were a little west of north from the house; I guess the nearest improvement of the Indians to the bay might be about a mile from it; I am not certain, as I have not been there for ten or eleven years.

Can you locate the improvements to which you have referred on the map now shown you? if you can, point them out.

[Objected to by counsel for claimant.]

The first improvements that I saw on the lands were at the foot of the place shown me on the map as "Springs and Willows," and the wheat fields and large corral were down close by the road; and there was another small corral down in the edge of the willows below the road; there was *sowing* in the willow swamp or thicket, at the points described on the map as "wheat field of Indians in 1841 and 1842," as "cultivated ground by Indians in 1841 and 1842," and as "melons, corn, beans, &c., 1841 and 1842."

Will you state how near to the line shown on the map as "an agreed line between Estudillo and Indians," the nearest Indian cultivation was?

[Objected to by claimant's attorney, in common with all other questions having reference to the map.]

I think, as nearly as I can now know or remember, the nearest cultivation was within fifty or one hundred yards of the line; I believe the line just spoken of is properly laid down on the map, or very nearly; it was then not drawn, but I understand that that was the line between Estudillo and the Indians, and such was the general understanding.

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Are there any natural objects on the face of the earth by which you can decide the line to be correct?

[Objected to by attorney for claimant.]

The hill marked on the map Z. Y., is one of the prominent points on the line; that is the only point I know anything about; I was familiar with the Indians about there for two or three years, from the year 1840 to 1843; they had some few horses and cattle.

EPHRAIM FRAVEL.

Sworn and subscribed before me, this 19th day of March, A. D. 1856.

GEO. PEN JOHNSTON,
U. S. Commissioner.

Deposition of Nicholas Gray.

Nicholas Gray, being duly sworn, deposes and says as follows:

Questions by U. S. Dist. Attorney.

What is your name, age, and place of residence?

My name is Nicholas Gray; I am fifty-six years of age, and reside in Oakland, Alameda co., California; I hold a commission as deputy surveyor, from the surveyor general of the United States for the State of California.

Look on the map now shown you, marked A—G. P. J., attached to the deposition of N. B. Smith, and state all you know about it.

[Objected to by att'y for claimant.]

It is a map of a survey of lands situated between San Leandro and San Lorenzo creeks, the bay of San Francisco, and the range of mountains to the east, exhibiting the boundaries of the "rancho San Leandro," and adjoining lands as surveyed by me in November, 1855; I commenced the survey on San Leandro creek, according to the deposition of José Martinez, (now marked as "Exhibit A—G. P. J.," and attached to this deposition, which attachment is objected to by attorney for claimant,) and according to the deposition of José Castro, (now marked "Exhibit B—G. P. J.," and attached and objected to as above,) and according to the description of the map hereto annexed, (marked "Exhibit C—G. P. J.," also objected to by att'y for claimant,) beginning at a point on the San Leandro marked on said map, and about forty rods from the place marked "Laguna" on said map; from that "Laguna" I took the range of mountains to San Lorenzo creek; thence down the creek to the salt marsh, and the bay; thence with the bay and the salt marsh to the mouth of San Leandro creek; thence up that creek to the place of beginning. There are nine thousand three hundred and eighteen acres within the boundaries I have described, including the "salt marsh;" there are eight thousand four hundred and twenty-four acres, exclusive of the "salt marsh;" within the red lines there are 4,520 acres, exclusive of the salt marsh; there are 3,904 acres within the yellow lines, exclusive of the "salt marsh." The line marked "An agreed line between Estudillo and Indians" was run at

the suggestion of N. B. Smith and others, from the "Strawberry patch" to the "White rock" on the hill; those two objects were actually there as laid down on the map; the "White rock" can be seen from the "Strawberry patch" on a clear day.

Cross-examination by Attorney for Claimant.

Who employed and paid you for making the survey?

Mr. Crane employed and paid me, who, I understood, was authorized to do so by some squatters down there.

NICH. GRAY.

Sworn and subscribed before me this 19th day of March, 1856.

GEO. PEN JOHNSON,
U. S. Commissioner.

Deposition of José Martinez.

Exhibit A—G. P. J.

SAN FRANCISCO, *Feb'y* 4, '53.

On this day, before Com'r Hiland Hall, came José Martinez, a witness in behalf of the claimant, José Joaquin Estudillo, petition No. 256, and was duly sworn, his evidence being interpreted by the secretary.

The U. S. associate law agent was present.

In answer to questions by counsel for the claimant, the witness testified as follows:

My name is José Martinez; my age is thirty-eight years, and I reside in Contra Costa county; have resided there ever since the year 1830.

I am acquainted with the "rancho San Leandro," and have known it from the year 1829; it was at first land on which the cattle of the mission of San José ranged, and in 1836 it was occupied by Estudillo, and he has occupied it since; in 1837 he built a house on the land and occupied it with his family, and continued to occupy it until his death, which was the 7th of June, 1852, and his family have occupied it to the present time; a portion of the land has been cultivated since the latter part of the year 1836, and it has also been used for the pasturage of stock.

I am acquainted with the location of the land. A paper is shown me being an official copy from the office of the surveyor general, being Exhibit A, filed in the case. The map represents the land; a line commencing on San Leandro creek at the laguna, as marked on the map, and running on the summit of the range of hills to the creek of San Lorenzo, is the dividing line between Estudillo and Castro. All the land between the two creeks, down to the bay, is considered as belonging to the rancho of Estudillo. Estudillo and his family have occupied the rancho as I have thus described it. At first he built a house and occupied it near the San Leandro, and towards the lower part of the land; then he built another house about a mile up the creek; after-

wards, when these lands were exhausted, he cultivated other lands on the San Lorenzo, towards the upper part of the rancho, and built a small house there for his servants. In 1842 there was a small Indian house on the left-hand side of the road leading from San Leandro to San José, on a hill. There were of all ages about ten Indians in number; they cultivated small patches of ground near the house for corn and melons. The house is correctly represented on the map, and designated "Silvester," near which were springs.

Estudillo was a married man, and left at his decease nine children. Their names were: Maria Conception, married to John B. Ward; José Ramon; Maria de Jesus, married to Wm. H. Davis; José Antonio, José Vincent, Luis Antonio, Maria Dolores, Madadalena, and Jesus Maria. The wife of Estudillo survived her husband, and is living. Her maiden name was Maria Juana Martinez. A tract of land three hundred varas in length and one hundred in width would embrace all the patches occupied by the Indians. Besides this, they occupied a house on the hill, as before stated.

(Signed) JOSE DE JESUS MARTINEZ.

Sworn and subscribed before me.

(Signed) HILAND HALL, *Commissioner.*

OFFICE OF THE U. S. LAND COMMISSION
FOR THE STATE OF CALIFORNIA,
San Francisco, M'ch 15, '53.

I, George Fisher, do hereby certify that the aforegoing is a true and correct copy of the original on file in this office in case No. 256, José Joaquin Estudillo.

GEO. FISHER, *Sect'y.*

Deposition of José Castro.

Exhibit B—G. P. J.

SAN FRANCISCO, *Feb'y 4th*, 1853.

On this day, before Com'r Hiland Hall, came José Castro, a witness in behalf of the claimant, José Joaquin Estudillo, petition No. 256, and was duly sworn, his evidence being interpreted by the secretary.

The U. S. associate law agent was present.

In answer to inquiries by the counsel for the claimant the witness testified as follows:

My name is José Castro; my age is forty-four years; and I reside at Monterey. I am a native of California, and have always resided here. I have at different times held the several offices of member of the territorial deputation, prefect, political chief, and military commandant. I am acquainted with the rancho called San Leandro; it is situated opposite this city, in Contra Costa county; I have known the rancho from about the year 1832. I was acquainted with José Joaquin Estudillo; he lived on the said rancho from about the year 1832 until his death. He occupied the land in 1838—I mean to say,

I passed by the land as early as 1832, and knew it at that time, and that he occupied it as early as 1838.

A paper is now shown me purporting to be a map or plan of land, which is hereto attached and marked H H No. 1. Said Estudillo and Guillermo Castro both applied to Governor Alvarado for the same land, and the controversy was referred to me by the governor as prefect, and I fixed the boundary line and marked it on the said map or plan, and wrote on the line the words "Linia divisoria por Dn. José Castro"—the land of Estudillo being towards the bay, and Castro's towards the mountains. The lands asked for by the said parties interfered with each other, and I was called upon to determine the boundaries, and did so as before stated. The map is a representation of the rancho called San Leandro. It was usual for such cases to be referred by the governor to the prefect, and for him to act upon them. Estudillo and Castro were both present, and I took information from others acquainted with the land, and decided upon the matter verbally; and in obedience to instructions from the governor, I informed them that if they did not abide by the decision they would forfeit their claims, and the land would remain vacant. In 1838 there was a small Indian habitation on the land, and the governor told me they might remain on the land; it was near the main road, on the side next the hills. The Indians had small patches under cultivation near the house.

In answer to inquiries by the associate law agent the witness says: He does not know anything about the *time* which crosses the dividing line on the map before mentioned, nor of the continuation of said cross line in another direction. I do not know which of the grants, Castro's or Estudillo's, were made first by the governor. I think my decision was about the year 1840 or 1841; it was before the grants were made.

(Signed) JOSE CASTRO.

Sworn and subscribed before me.

(Signed) HILAND HALL, *Com'r.*

OFFICE OF THE U. S. LAND COMMISSION FOR CALIFORNIA,
San Francisco, M'ch 15, '53.

I, Geo. Fisher, hereby certify that the aforegoing is a true and correct copy of the original on file in this office in case No. 256, José Joaquin Estudillo.

GEO. FISHER, *Sect'y.*

[*For map see original, page* 119.]

OFFICE OF THE SURVEYOR GENERAL OF THE
UNITED STATES FOR CALIFORNIA.

I, Samuel D. King, surveyor general of the United States for the State of California, and as such now having in my office and under my

No. 4

custody a portion of the archives of the former Spanish and Mexican territory or department of Upper California, do hereby certify, that the preceding and hereunto annexed page of tracing paper numbered one, exhibits a true and accurate copy of a map, being a part of an expediente, No. 300, now on file, and being a portion of the said archives in this office.

In testimony whereof, I have hereunto signed my name officially, and affixed my private seal, (not having a seal of office,) at the city of San Francisco, Cal., the 31st day of January, 1853.

[L. S.]

SAM'L D. KING,
Surv. Gen. Cal.

UNITED STATES DISTRICT COURT,
Northern Dist. California.

THE UNITED STATES
vs.
JOSE JOAQUIN ESTUDILLO.

Messrs. SAUNDERS & HEPBURN,
Defendant's Attorneys.

GENTLEMEN: Take notice that the testimony of Ephraim Flavel, N. B. Smith, N. Gray, and José Maria Amador will be taken on the part of the government of the United States in this cause on Wednesday, March 19th, 1856, between the hours of eleven o'clock a. m. and 5 o'clock p. m. of said day, (and to continue from day to day thereafter, between the hours aforesaid, until all are taken,) before the United States commissioner of said court, at his room in the building known as the Merchants' Exchange, city of San Francisco.

Dated San Francisco, March 14th, 1856.

A. GLASSELL,
Asst. U. S. Dist. Attorney.

Service admitted, March 14th, 1856.

SAUNDERS & HEPBURN.

Endorsed: Filed March 27th, 1856.

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Deposition of Robert E. Newland.

UNITED STATES DISTRICT COURT,
Northern District of California.

SAN FRANCISCO, *March 27th*, 1856.

On this day before me, Geo. Pen Johnston, a commissioner of the United States for the districts of California, duly authorized to administer oaths, &c., &c., came Robert Erskine Newland, a witness produced on behalf of the United States, in case No. 234, being an appeal from the board of commissioners to ascertain and settle the private land

claims in the State of California, in case No. 256 on the docket of the said board of commissioners, and was duly sworn and testified as follows:

Present, the acting district attorney of the United States on behalf of the U. S.; and Messrs. Saunders & Hepburn on behalf of the claimant.

Questions by the Acting U. S. District Attorney.

What is your name, age, and place of residence?

Robert Erskine Newland is my name; I am forty-six years of age; I reside in San Francisco, and have lived here since 1849.

Were you acquainted with José Joaquin Estudillo during his lifetime; and if so, state whether at any time you had a conversation with him in regard to his title to the place called San Leandro? And if so, state the time, place, and all the particulars of said conversation.

I met with José Joaquin Estudillo during his lifetime once or twice; I had a conversation with him once in regard to his title to the place called San Leandro; I had the conversation to which I refer with him in April, 1849; part of the conversation transpired in San Francisco, part of it in Alameda county, or across the bay where it is now Alameda county; a friend of mine wanted to buy a part of Estudillo's ranch; he showed me and my friend the ranch and the papers to it; my friend's name was Marcus Esquella; none of the papers were signed; he said he would get that rectified afterwards, but we would not enter into any arrangement with Estudillo because his papers were not signed; Estudillo said that the reason why the papers were not signed was that the Mexican government would not make him a grant of the land until he had effected some settlement with the Indians on his ranch.

Did Estudillo state to you at that time that he ever had any other title-papers to the rancho than those exhibited to you, on the occasion of your conversation with him?

He never said that he had any more, but that these were the only papers he had belonging to the rancho.

Cross-examination.—Question by the Attorney for the Claimant.

When did you first arrive in California?

I arrived in California about the 2d of March, 1849; I came from Valparaiso in the ship Chateaubriand; the master's name was Roberts; I was born in Scotland; the conversation I had with Estudillo about his land occurred, I suppose, about the middle of April, 1849; it was the first time I ever saw him; Esquella took me to see Estudillo; I met him first here in San Francisco, and Esquella and I went across the bay with him; I knew Esquella in Chili; he came to California one vessel before me; we crossed the bay at that time in a launch; I don't recollect any one besides Esquella, Estudillo, and myself, being present at the conversation of which I have spoken; he showed us the papers to the ranch in his house; we then went out and looked at the ranch; I met Estudillo at his own house, I believe—at a house then situated at the corner of Jackson and Stockton streets; we wanted to

buy, and Estudillo wanted to sell land; we wanted to buy about a third of Estudillo's land; he asked us seven thousand dollars for the third; the ranch that we visited was, I suppose, about eight miles from here; I can't recollect what kind of a house it was in which Estudillo showed us the papers to the ranch; I read the papers which he showed us; one of them was the "expediente," I think they call it; the other was the grant; I don't remember the contents of the "expediente;" I don't know how many pages there were in the "expediente;" the papers were loose and not bound together; there were a good many of them; I speak the Spanish language; the grant was, I believe, for about a league of land, more or less; I can't say what the boundaries were; we read them, but cannot say what they were; I asked Estudillo if he had any other papers; he said he had no other papers; he was anxious to sell the land; he claimed it as his own; there was a Spanish gentleman, whose name I do not recollect, a friend of Estudillo's, and some peons were with us when we crossed the bay at the time I speak of; we landed at the bite of water nearly opposite the house, and five hundred yards distant from it, more or less; I mentioned the conversation with Estudillo immediately after it occurred, and since, to several persons; one of them is now present, and resides upon the ranch; Estudillo was living very well according to the custom of the country; I suppose his ranch was well stocked; Esquella is now in Chili; he lived in San Francisco for four years, engaged in speculating; he was not connected with any house here; the grant showed me by Estudillo, I think, was in due form, and purported to be from Alvarado, but was not signed; I can't tell what the other papers were; I claim no interest in the Estudillo ranch, either directly or indirectly.

Direct Examination resumed.—Questions by the Acting U. S. Dist. Att'y.

How did you happen to make the statement to the gentleman present here that you knew any thing about Estudillo's ranch?

I accidentally fell in with the gentleman at Mr. Jessup's, in this city, and in talking about different matters I mentioned what I knew about Estudillo's ranch. The reason we did not purchase the land was, because the grant was not signed. Estudillo said that the grant would be signed, when we raised the objection to the purchase on account of its not being signed.

Cross-examination resumed.—Questions by the Att'y for the Claimant.

Do you know the name of the ranch about which you spoke to one of the gentlemen here present?

I do not know its name; it belonged to the Estudillo who lived at the corner of Jackson and Stockton streets; and lived also over at the place called San Leandro.

his
ROBER'T E. ⋈ NEWLAND.
mark.

Sworn and subscribed before me, this 27th A. D. 1856.
GEO. PEN JOHNSTON,
U. S. Commissioner.

The witness says that he knows how to write, but from a stroke of apoplexy he has lost the use of his right hand.
GEO. PEN JOHNSTON,
U. S. Commissioner.

Endorsed: Filed March 27th, 1856.
JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Deposition of Alpheus Felch.

U. S. DISTRICT COURT,
Northern District of California.

THE UNITED STATES
vs.
JOSE JOAQUIN ESTUDILLO.

SAN FRANCISCO, CAL'A,
April 8th, A. D. 1856.

On this day, before me, George Pen Johnston, a commissioner of the United States for the districts of California, duly authorized to administer oaths, &c., &c., came Alpheus Felch, a witness produced on behalf of the United States, in case No. 234, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 256 on the docket of the said board of commissioners, and was duly sworn, and testified as follows. Present, the acting U. S. dist. att'y on behalf of the United States, and Saunders & Hepburn on behalf of the claimant.

Direct Examination.—Questions by the Acting U. S. District Attorney.

What is your name, age, and place of residence?

My name is Alpheus Felch; 49 years of age; and I reside in Michigan, in the city of Ann Arbor. I was a member of the late board of land commissioners for the settlement of private land claims in California.

State, if you please, from the examinations you have made as member of the late board of United States land commissioners, whether the form of grants attached to the papers constituting the expediente purported to be a copy of the grant delivered to the party, or whether the grant delivered to the party, as a matter of course, conformed in all respects with the form found in the "expediente?"

I would state, in answer, that in some of the expedientes which were filed before the commission no form of a grant was attached; in others there were such forms; these forms were never considered as true

copies of the grants which were issued in such cases; sometimes they conformed entirely with the grants, and sometimes they did not; they were regarded by us as rough draughts, made by the clerks in the office; in some cases there were more than one attached to the expediente; in comparing them with the grants we frequently found a difference between the two; the draught attached to the expediente usually had no signature, and sometimes was left incomplete in other respects. We did not regard such document attached to the expediente as evidence that such a grant was issued.

Cross-examination.—Questions by the Att'y for the Claimant.

Have you any personal knowledge of the customs of the Mexican government in issuing these grants?

I had no personal knowledge previous to my connection with the commission; nor have I now any knowledge on the subject, except that derived from an examination of the papers before the commission, and information contained in the depositions presented to the board.

Were these rough draughts, spoken of in your examination in chief, substantial copies as a general rule, or as a general rule were they deficient as substantial copies of grants?

I know that the contents of some of them were the same as the grants which were proved in the same case; but I cannot tell whether of all the cases a larger number would be found to be the same or not.

With what object were the rough draughts found in the expedientes preserved by the Mexican government?

I do not know the particular object for which they were preserved.

For what reason do you say that the rough draughts of grants found among the expedientes were not considered by the board as evidence that a grant was issued?

In my opinion, to substantiate a grant, it was necessary to show the delivery of the grant to the grantee. If a grant was prepared in the office, it might still be retained by the governor and never delivered to the party. As to the rough draught found attached to expedientes, it was usually an incomplete instrument, even in form, being without signature, and not evidence that such grant was ever completed in the office, much less that it was delivered to the party. The record of a grant in the office, as I understood it, would be found, where such record was made, in a separate book kept for that purpose, and not as a part of the expediente. I understand that books were kept in the government office in which at an early period the grants issued were recorded at full length; afterwards a mere descriptive memorandum was entered of the grants which were issued; some of these books, I understand, have been lost or destroyed.

Have you ever known any instance in which a rough draught of the grant was in evidence accompanied with proof that no grant had been issued?

I do not remember any case in which there was affirmative proof that no grant was issued. ALPHEUS FELCH.

Sworn and subscribed before me, and read by witnesses before signing, this 8th day of April, A. D. 1856.

GEO. PEN JOHNSTON,
U. S. Commissioner.

Endorsed: Filed April 8th, 1856.

JOHN A. MONROE, *Clerk.*
By W. H. CHEEVER, *Deputy.*

Stipulation.

In the District Court of the United States.

JOSE JOAQUIN ESTUDILLO
vs.
THE UNITED STATES. } San Leandro.

It is hereby stipulated:

1st. That the evidence given by the witness Palomas, in the case of Boynan vs. Campbell et al., as the same appears in the notes of Judge Hoffman, be admitted as evidence in the above entitled cause.

2d. That the copy of the grant found in the expediente is in the handwriting of ——— Arce, at that time a clerk in the office of secretary of State.

3d. That the evidence given by the witness Ignacio Peralto, in the said case of Boynan vs. Campbell et al., as the same appears in the notes of Judge Hoffman, be admitted as evidence in this cause.

SAUNDERS & HEPBURN,
Plff's Att'ys.

WM. BLANDING,
U. S. Dist. Att'y.

Endorsed: Filed Dec. 15th, 1856.

JOHN A MONROE, *Clerk.*
By W. H. CHEEVER, *Deputy.*

Deposition of Francisco Arcè.

United States District Court northern district of California.

SAN FRANCISCO, *January 28th*, 1857.

On this day before John A. Monroe, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Francisco Arce, a witness produced on behalf of the claimant, in case No. 234, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 256 on the docket of the said board of commissioners, and was duly sworn, and testified as follows: his evidence being interpreted by J. Edgar Grymes, a sworn interpreter.

Present, Jno. H. Saunders, esq., counsel for the claimant, and William Blanding, esq., U. S. dist. att'y.

Question by Counsel for Claimant.

What is your name, age, and place of residence?

Answer. Francisco Arce, 35 years of age, and reside in Monterey Co., Cal.

2d question. What was your occupation in the year 1842?

Answer. I was first or chief clerk of the governor of California, during that year.

3d question. What were the duties you performed as such?

Answer. They were to write and extend all kinds of documents, and among them government acts relating to grants of lands.

4th question. Do you know the rancho of "San Leandro;" and if so, when did you first become acquainted with said rancho?

Answer. I do; I first knew it in 1836 or 1837.

5th question. Do you know whether there is an expediente in relation to the grant of San Leandro? and if so, state what is the source of your knowledge.

Answer. There is an expediente which was made to the deceased, José Joaquin Estudillo; I wrote it with my own hands. The petition of Estudillo was anterior to the title, and the title was issued on the 16th of October, 1842; I wrote the said title myself.

[Witness is here shown a written document, admitted to be the original expediente of the grant in this case, from the archives of the former government, now in possession of the United States surveyor general for California, a copy of which is found in the transcript in this case, filed in this court from the board of U. S. land commissioners, on page 43, and marked "Exhibit No. 2, A. F.," annexed to the deposition of Juan B. Alvarado, November 11th, 1853, and says that the "Vista la peticion" therein and the grant are in my own handwriting, and done when I was chief clerk, as aforesaid. The grant or final title is a copy of the one delivered at that time to the grantee, José Joaquin Estudillo, except that the one delivered to the grantee was signed by Juan Bautista Alvarado, the then governor of California, and Manuel Jimeno, secretary. I know the handwriting of José Zeuon Fernandez, at or before that time alcalde of the jurisdiction of San José, within which jurisdiction said rancho of San Leandro was situated. He acted also as government surveyor, and upon occasions, he being a very intelligent man, disputes in regard to boundaries were often referred to him for survey and adjustment. The writing upon and in relation to the diseño or map in said expediente is in the handwriting of said Fernandez. Said grant was delivered in my presence, about the time the expediente of it bears date to the grantee, said Estudillo.]

6th ques. Have you ever seen said grant (delivered to Estudillo as aforesaid) since the time of its delivery?

Ans. I afterwards saw the grant in the possession of Estudillo, at his house, in 1844 or 1845.

7th ques. Upon what occasion did you see said grant?

Ans. I was upon a visit there; Estudillo told me of a dispute with Guillermo Castro about land, and said to me: "You wrote my grant,

and I want you to look at it and tell me whether there is anything wrong." I did look at it, and recognised the grant that I have already testified to.

8th ques. Was it, or was it not, usual at that time for the copy of the grant in the expediente to be signed by the governor or secretary?

Ans. In most cases they were not signed.

9th ques. Was there a record of grants made by the government at that time?

Ans. There was. The witness points at the expediente above mentioned as the record of the government of this grant, except the envelope placed by the surveyor general.

10th ques. What is an expediente?

Ans. An expediente means all the documentary acts of the government in relation to the subject-matter, all kept together; that is, each transaction by itself.

FRAN'CO ARCE.

Sworn and subscribed this 28th January, 1857.

JNO. A. MONROE,
U. S. Commissioner.

Endorsed: Filed January 28th, 1857.

JOHN A. MONROE, *Clerk.*
By W. H. CHEEVERS, *Deputy.*

Deposition of Juan B. Alvarado.

UNITED STATES DISTRICT COURT,
Northern District of California.

JOSE JOAQUIN ESTUDILLO
vs.
THE UNITED STATES.

Gov. Alvarado's Evidence.

Knew Joaquin Estudillo; I gave to Joaquin Estudillo of land called "San Leandro;" I gave the title in 1841 or 1842; I was then governor of California; the land is situated in what is now the county of Alameda; the paper was signed by me—by myself and Manuel Jimeno.

Gov. Alvarado recalled.

Objected to for want of sufficient foundation for proof of the contents.

The concession I made was for land called "San Leandro." Traced copy of expediente offered. Objected: First, because not made by the witness; 2d, not a copy of compared by the witness. Expediente produced from the archives; admitted to be an original from archives, consisting of, 1st, petition; 2d, order of concession; 3d, copy of titulo. These papers taken together are called expediente; expediente in an application for land is the petition of the party, and all the orders and information ordered by the governor to be collected together; after receiving a petition, the next step taken is to obtain information with

regard to the land. When the governor receives a petition he asks for information; he sends the petition to the secretary's office with a marginal order, if he deems it necessary for information; the secretary puts on his table amongst pending business, when, if he did not require information, sometimes made the decree of concession on the margin of the petition; not always.

Do the archives show a single instance of a concession on a separate piece of paper, when no information was asked?

I do not now recollect one case of the kind; the secretary sometimes made out a final title, without an order of concession signed by the governor. I remember once having made a decree of concession without having signed it, and sent it to the secretary; it was my handwriting; it was the case of Sutter; this concession is not in my handwriting; there was no custom to send the expediente to the departmental assembly, if in session; I don't know whether any of the expedientes contain more than one draught of the title; it depended entirely upon the secretary, whether he made the title first and then copied it, or made the draught first and then drew up the title to be signed; it was part of the mechanism of the office; I do not remember any instance where the governor or departmental assembly made any correction or alteration in the title as drawn up; I do not remember any law which required the registering of titles; I do remember several instances where a title was issued on an order of concession, neither signed by the governor nor in his handwriting; I cannot now specify any particular case; in my time it was the custom to give a verbal order to the secretary to write out the concession; I do not remember an instance of a concession unsigned, having been acted on or sent back for that reason by the territorial deputation; my deposition was taken in the case before the board; the secretary of the deputation returned the concession to the secretary of the governor, with the observation that it was unsigned; I know of instances where concessions were presented to the assembly unsigned; I do not mean to say that no such instance had occurred; don't remember a case where the deputation declined to approve a concession for the reason that it was not signed; I recollect various cases where the concession was presented unsigned to the deputation. In such cases they made no great difficulty, provided it was archived. In various instances they confirmed the concession without exacting the signature; sometimes the secretary of the deputation or that of the governor observed it, and had it signed in order to regularise the proceedings. This has happened under my administration and that of other governors; can't mention any particular instance. If I were paid for the trouble I might find one.

Did you swear, in the Sutter case, that you had signed in the concession?

I never said I signed the concession. I said then, and say now, that I signed the titulo. I made out a borrador or rough draught of the concession in my handwriting, but was not signed.

It was usual to deliver the title to the petitioner, subject to the approval of the D. Ass., and afterwards send the expediente with a draught of the title issued, to the party for the approval of the assembly.

I never knew a case where the draught of the title was put in the expediente, without the original title having been delivered to the party. I never knew a case where, after the draught was made out, the governor refused to sign and the grant was stopped.

Examination resumed.

Expediente shown.

There were no informes required in this case, because the governor knew that the petitioner had been in possession of the land since 1838, with the consent of the government, and knew his qualifications and all the circumstances.

I know this paper; it is the original petition of Estudillo; it is in his handwriting, and signed by him; I know his handwriting.

The next is the decree of concession. It is written by Arce, the 1st officer of the secretaria.

The 3d paper is also written by Arce.

The writing on the "plan" is by Fernandez, an ancient alcalde of San José.

I recognise all these papers as the original documents on which the title issued.

The title delivered to the party always referred to the plan, which remained with the expediente. The petitioner could have a copy if he wished. This plan was made by Fernandez, and was delivered afterwards to the prefectura. I think this plan was not presented by the petitioner, but I caused it to be made by the prefectura. The grantee was already in possession, and the plan was, I think, one of the means of information I adopted.

The espediente is now offered in evidence.

Obj. to: 1. As not *seeing* a record authorized to be made by law.

2. Because not the best evidence which the nature of the case admits of.

3. Because the regulations provide that all grants shall be recorded in a book.

(The witness is shown the map.)

This map was made by order of the prefectura by Fernandez, and was intended to give me information as to the ———, and also enable me to decide a dispute between Estudillo and Don Guillermo Castro; it was made before the grant was issued.

That dispute related to their boundaries.

Castro had cattle on the east side of the Lomerias and Estudillo on the west. Castro wanted all the Lomerias, or low hills; Estudillo wanted the same. With a view of settling this, I ordered the prefectura to make a map; this was before I made the grant to Estudillo. This was done; it is the map shown yesterday. On receiving the map, I assembled the parties in my house to settle the dispute amica-

bly, as they were both respectable. For me, I found myself unable to bring them to a settlement. I sent for José Castro, the prefect, who was then in Monterey, to my house; I told him to go with the parties and endeavor to settle it amicably; and if he could not, to report to me what was just to be done. I gave him the map. The prefect reported to me that he could not effect a settlement, and he gave me a map (the 2d) with a line drawn on it, as the line which he thought it was just for me to establish. I then ordered the secretary to make the grant for a league, more or less—on the east the Danamaderas de Aguas, on the ——— side of the high hills; on the west the bay; on the south the arroyo de San Lorenzo, on the arroyo San Leandro. I accepted this line, and ordered the secretary to make out the grant in conformity.

(Paper shown witness.)

This is an official note for the secretary of the governor, which he sent when I asked for the first plan.

(The espediente marked Guillermo Castro is shown to witness.)

Witness identifies the report of José Castro, and the marginal order is in his (witness's) handwriting.

I saw the grant in Estudillo's possession in 1844, at his house. The grant I made was of "San Leandro" to Joaquin Estudillo; the boundaries were described.

What I recollect of the grant is this: I gave him the land on the N. the arroyo San Leandro; on the south the San Lorenzo; on the east the Derramaderras de las ajos de Agua, high hills; the west by the bay or the sea.

In the grant are the ordinary conditions, and one special one with regard to the Indians, that they should not be molested; I do not recollect the precise words. The grant was for one sitio de ganado mayor, more or less.

(The expediente is offered in evidence, and the witness is asked to look at the draught, refresh his memory, and testify to the contents of the original title from his memory as refreshed.)

Obj.: Because it is not a mem. made by himself.

2. It was not compared by him with the original.

3. Because not a record or a copy of the original authorized to be made by law.

4. It is not the best evidence for Arce, who made it his living.

To the court: Petition was handed to me about the time it is dated; I remember it, and identify it as having been before me. I don't think I ever saw .

(Expediente admitted and questions allowed, subject to exceptions.)

I now recollect, after reading this draught, that the original was in the same terms as this copy. I remember now that the grant was in 1842, my memory being refreshed by seeing this date.

(Permit shown to witness.)

It is in handwriting of Manuel Jimeno. This document is from him; it was issued by him in 1839, when he was accidental governor; I see

it in his hand, and I think it must have been when he was acting provisionally as governor; he was secretary and 1st member of the assembly. I don't remember that I have seen , until about three days before the trial, when I went with the lawyers to look at them in the archives; I don't remember that I saw them at the commission. I think I did see them, now I recollect, at the commission. I believe I gave two testimonies, and probably saw it twice. I generally read over the original grant before signing. It is possible that I may have signed without reading, when consulted by my confidential secretary. I considered myself in legal authority from 1838 until last day of December, 1842. I can't state how many grants I issued—a great many.

I think in many instances I could recollect what land I had granted, for I knew all the inhabitants.

I recollect about this grant, because this dispute arose, and all the circumstances occurred.

I remember the resolution I came to, and independently of all these preliminaries I distinctly remember that the boundaries as described were written in the grant executed by me; I recollect having read this grant over before I signed it. This dispute and trouble made me very particular about this grant. When I testified before the commission I looked at this expediente to refresh my memory. When I looked at it three or four days ago, I read over the grant—not all of it, but in parts. I examined it.

If I had never seen this copy at all I could not have recollected the date precisely. I made my recollection before, that it was in 1841 or 1842. I now see it was in 1841.

This expediente is not necessary for me to recollect the grant. I had a large conversation with Estudillo about this grant. It was in 1844. I don't remember whether I asked for the plan in consequence of the first petition of Estudillo in 1837, or of the last in 1842.

I cannot state what particular plan accompanied the report of José Castro. I received the map from José Castro on which I made the grant, about the time or a few days before I made the grant—I think after making the grant. I next saw the map in Mr. Hepburn's office. I don't recollect having seen it before that time. The Indians never had any title to any part of this land. They had some consideration to remain there. I remember two different times when Jimeno exercised provisionally office of governor. I remember he did during this year. Don't remember that he did so at the precise date of this permit, but I think so. I have read this grant in parts several times since I have been in court and had it before me. I don't recollect how many conditions there were annexed to the grant; 3 or 4—can't say precisely. I don't remember the date. I remember very well where I was when I signed the grant. I was in my private house in Monterey. Jimeno was present. Can't remember what time of day it was. I remember that I read it myself. The secretary stood by me. After I handed it to Jimeno I did not see it until 1844. Jimeno must have given it to the grantee.

I remember that I made a grant to "Soto." It was for a league by the side of Guillermo Castro.

I can't at this moment recollect his boundaries, but I could after reflection. I think his boundary on the south was Jesus Vallejo. It was very usual to present a map with the petition, but sometimes they presented petitions and promised to present a map afterwards. The government were very liberal.

I suppose in this case that the secretary lost the map presented with the petition, or laid it on one side, because the land was not granted in conformity with that map, but in conformity with the map of José Castro.

Deposition of José de Jesus Vallejo.

José de Jesus Vallejo.

I was administrator of the Indians of the mission of San José in 1837, 1838, and 1839.

I put some Indians on the land known as "San Leandro" in 1837. They were "Annisitti" and "Silvestro," with their families. They lived on two parts of the ranch. They lived in the winter at a place where I ordered an adobe house to be placed.

They lived in the spring at the brook of San Lorenzo. The adobe was placed to the east of a place where the water runs down from the hills into the plain. They lived in summer on the bank of a creek in a wood of willows and sycamore. There were three crossings of the road from San José over the San Lorenzo: the Paso Viego, the Paso del Ramedero, and the Paso del Puente.

The settlement of the Indians in the summer was near the Paso Viego. From the old Paso to where the Indians lived was about 300 varas to west of the road. The Indians were towards the bay from the road. The house was on the top of the first hill. It was about a mile from the old road "Poco mas O'Menos." The smallest distance to the road from the house was about 1000 yards. I could point out on a correct map the position of the adobe.

The creek at the Paso Viejo forms a semicircle or quarter-circle, where an American lives named Farrelly; I cannot say where it is on the map, but it is very near there.

From 1837 until now, I think, there are some Indians there; those I put there are dead. At the Paso they cultivated 4 or 5 acres; at the adobe almost nothing, only a few patches. I am not a colindant of the rancho of San Leandro.

I have been cited as a neighbor to their Rodeos. I was always cited to be present at branding time in each year; I attended personally twice, and I know the Rodeo boundaries; when I did not go myself, my major domo went. The boundaries were on one side the San Leandro; on another the San Lorenzo; on the east the "Lomas" and the bay.

[The witness draws on a piece of paper the boundaries designating the creeks, the adobe, and the road.]

The eastern boundary was the top of the hills. The line on the top of the hills was the division between this ranch and that of Guillermo Castro. I have known these hills as dividing lines 12 or 13 years. I have no present recollection of having met G. Castro at my Rodeo. I never placed any other Indians, than those I have mentioned, on this land; I placed them there in consideration of their having worked two years in the mission. They received no title for the land that I know. As administrator, if I saw an Indian who was a good man, I had the right to give them a permission to go upon the land as a resting place. I know one of the other Indians on this ranch; saw him 15 days ago; don't know when he went there. Annisitto and Sylvestre may have lived three or four years before they died. I knew a corral of the Indians west of the road. I don't know of any corral in the willows. Don't know any vineyard of theirs; they had none. I was not where the Indians lived in 1841 or '42. I don't know about those two years, but generally they cultivated there. I don't recollect in what year I was there; but I knew where they generally cultivated. The Rodeo boundaries were established after the concessions to Castro and Estudillo; I don't know the year, but it was in 1843 or '44; I don't know exactly when I attended the first Rodeo; *I* might be in 1846 or '47; before that time the Rodeo boundaries were known; they were established by the colindantes themselves. When there is no boundary line on one side they gather the cattle from wherever they may be. I knew these boundaries, because many times I passed by the road and saw the animals. I learnt the boundaries from Guillermo Castro and others. The Indians lived near the middle pass of the arroyo.

[The witness points out the Paso Viejo.]

It was below where Farrelly's place is; it passed over the creek at a bend. The upper Paso is where the bridge is now; the lower one is at the place where there is no channel or ditch for the creek, but the waters spread themselves around. I have frequently passed there in a wagon.

Direct resumed.

I know that the ranch was cultivated by Estudillo in 1838. The first place was where he had his old house; the second was where there is a corral for sheep at the present time. The first place was near San Leandro creek. I think he had about a hundred acres.

The second place was where it is marked Farrelly on the map. This was in 1846 or 1847. Don't know of any other places where he cultivated between 1838 and 1846.

The last sowing was outside of the adobe line. When I gave permission to the Indians it was public lands.

Stipulation to use evidence of J. B. Alvarado and J. De J. Vallego.

District Court of the United States for the northern district of California.

JOSE JOAQUIN ESTUDILLO vs. THE UNITED STATES. } No. 234.

On appeal from the land commission of the United States to settle land claims in California, No. 256.

It is stipulated that the within evidence of Juan B. Alvarado, José Jesus Vallejo, and , (being copies of judge's notes in the case of Boyrean vs. Campbell et al., an ejectment for part of the Rancho San Leandro, tried in the circuit court of the United States for the district of California, northern district,) may be used before the district court of the United States for the northern district of California, in the case number 256 of the land commission and number 234 before said district court, (upon appeal,) being the case of José Joaquin Estudillo vs. United States, for the Rancho San Leandro, subject to legal exceptions, except the mode of taking the same, and as if said testimony had been regularly taken before a commissioner of said court.

Dated: San Francisco, February 21st, 1857.

WM. BLANDING, *Dist Atty.*
SAUNDERS & HEPBURN,
Claimant's Atty.

Endorsed: Filed Feb'y 23d, 1857.

JOHN A. MONROE, *Clerk.*
By W. H. CHEEVERS, *Deputy.*

Translation of Expediente of Rancho San Lorenzo.

Third Seal—One Dollar.

Provisionally qualified by the maritime custom-house of the port of Monterey, in the department of California, for the year 1843.

MANUEL CASTANARES.

MICHELTORENA.
[SEAL.]

Manuel Micheltorena, Brigadier General of the Mexican army, Adjutant General of the staff of the same, Governor, Commanding General, and Inspector of the Department of Californias:

Whereas Don Guillermo Castro has claimed, for his personal benefit and that of his family, the place known by the name of "San Lorenzo," bounded by the rancho of San Amador, with that of San Moraga, with that of San Ramon, with that of Sen. Peralta, with that of Sen. Estudillo, with that of Sen. Vallejo and that of Don Francisco Soto, on the side of the main road, from the Arroyo del Alto to that of San Lorenzo, in consideration that there has been already made a concession to the said Soto on the side towards the beach, all the necessary steps

The eastern boundary was the top of the hills. The line on the top of the hills was the division between this ranch and that of Guillermo Castro. I have known these hills as dividing lines 12 or 13 years. I have no present recollection of having met G. Castro at my Rodeo. I never placed any other Indians, than those I have mentioned, on this land; I placed them there in consideration of their having worked two years in the mission. They received no title for the land that I know. As administrator, if I saw an Indian who was a good man, I had the right to give them a permission to go upon the land as a resting place. I know one of the other Indians on this ranch; saw him 15 days ago; don't know when he went there. Annisitto and Sylvestre may have lived three or four years before they died. I knew a corral of the Indians west of the road. I don't know of any corral in the willows. Don't know any vineyard of theirs; they had none. I was not where the Indians lived in 1841 or '42. I don't know about those two years, but generally they cultivated there. I don't recollect in what year I was there; but I knew where they generally cultivated. The Rodeo boundaries were established after the concessions to Castro and Estudillo; I don't know the year, but it was in 1843 or '44; I don't know exactly when I attended the first Rodeo; *I* might be in 1846 or '47; before that time the Rodeo boundaries were known; they were established by the colindantes themselves. When there is no boundary line on one side they gather the cattle from wherever they may be. I knew these boundaries, because many times I passed by the road and saw the animals. I learnt the boundaries from Guillermo Castro and others. The Indians lived near the middle pass of the arroyo.

[The witness points out the Paso Viejo.]

It was below where Farrelly's place is; it passed over the creek at a bend. The upper Paso is where the bridge is now; the lower one is at the place where there is no channel or ditch for the creek, but the waters spread themselves around. I have frequently passed there in a wagon.

Direct resumed.

I know that the ranch was cultivated by Estudillo in 1838. The first place was where he had his old house; the second was where there is a corral for sheep at the present time. The first place was near San Leandro creek. I think he had about a hundred acres.

The second place was where it is marked Farrelly on the map. This was in 1846 or 1847. Don't know of any other places where he cultivated between 1838 and 1846.

The last sowing was outside of the adobe line. When I gave permission to the Indians it was public lands.

Stipulation to use evidence of J. B. Alvarado and J. De J. Vallego.

District Court of the United States for the northern district of California.

JOSE JOAQUIN ESTUDILLO
vs.
THE UNITED STATES. } No. 234.

On appeal from the land commission of the United States to settle land claims in California, No. 256.

It is stipulated that the within evidence of Juan B. Alvarado, José Jesus Vallejo, and , (being copies of judge's notes in the case of Boyrean vs. Campbell et al., an ejectment for part of the Rancho San Leandro, tried in the circuit court of the United States for the district of California, northern district,) may be used before the district court of the United States for the northern district of California, in the case number 256 of the land commission and number 234 before said district court, (upon appeal,) being the case of José Joaquin Estudillo vs. United States, for the Rancho San Leandro, subject to legal exceptions, except the mode of taking the same, and as if said testimony had been regularly taken before a commissioner of said court.

Dated: San Francisco, February 21st, 1857.

WM. BLANDING, *Dist Atty.*
SAUNDERS & HEPBURN,
Claimant's Atty.

Endorsed: Filed Feb'y 23d, 1857.

JOHN A. MONROE, *Clerk.*
By W. H. CHEEVERS, *Deputy.*

Translation of Expediente of Rancho San Lorenzo.

Third Seal—One Dollar.

Provisionally qualified by the maritime custom-house of the port of Monterey, in the department of California, for the year 1843.

MANUEL CASTANARES.

MICHELTORENA.
[SEAL.]

Manuel Micheltorena, Brigadier General of the Mexican army, Adjutant General of the staff of the same, Governor, Commanding General, and Inspector of the Department of Californias:

Whereas Don Guillermo Castro has claimed, for his personal benefit and that of his family, the place known by the name of "San Lorenzo," bounded by the rancho of San Amador, with that of San Moraga, with that of San Ramon, with that of Sen. Peralta, with that of Sen. Estudillo, with that of Sen. Vallejo and that of Don Francisco Soto, on the side of the main road, from the Arroyo del Alto to that of San Lorenzo, in consideration that there has been already made a concession to the said Soto on the side towards the beach, all the necessary steps

and investigations relating thereto having been previously taken, according to the provisions of the laws and regulations, using the powers that are conferred on me in the name of the Mexican nation, I have conceded to him the tract above mentioned, declaring to him the ownership thereof by the present letters, subject to the approval of the m't ex't departmental council, and under the following conditions:

1st. He may fence it, without injury to the crossways, roads, and thoroughfares, and without embarrassing the commons of the Pueblo de San José, when they may be assigned, nor hinder the grazing of the cattle of the mission; he may enjoy it freely and exclusively, applying it to the use or cultivation which may best suit him.

2d. The tract of which donation is made, is six sitios de ganado mayor, without including six hundred varas of land which are conceded already by an anterior title. The judge giving the possession shall cause it to be measured according to ordinance, the surplus which may result remaining for the use of the nation.

3d. He shall solicit the proper judge to give him judicial possession by virtue of this despatch, whereby the boundaries shall be marked, in the limits of which he shall put, besides the landmarks, some fruit trees or useful wild ones.

4th. If he contravene these conditions, he shall lose his right to the tract, and it shall be denounceable by another.

Wherefore, I order that, this present serving to him as a title, and being held as firm and valid, an entry be made thereof in the respective book, and it be delivered to the party interested, for his safety and other purposes.

Given at Monterey, the 25th of October, 1843.

MAN'L MICHELTORENA.

MAN'L JIMENO, *Sect'y.*

An entry is made of this despatch in the respective book, at page 2.

JIMENO.

The 17th of January, 1844, by an agreement which Don Carlos Castro, as attorney of his son Don Guillermo, executed with Don Fran'co Soto, it resulted according to the acts which were made for the purpose, that the boundaries of the said Don Guillermo Castro should be from "Sanjon," looking at the south side of his house; and from the same Sanjon in a direction from where it makes parallel with it, six hundred varas should be measured towards the main road, and from where they conclude, a right line be taken up to arroyo de San Lorenzo; to be recognised as boundaries of the other side of the said Sanjon, the border of the group of hills (loureria) which lie towards the plains measuring ten varas up the hills for the western side; and m't ex't the governor general, Don Manuel Micheltorena, having approved the said agreement, he ordered it to be noted in the title, and signed it.

MANUEL MICHELT'A.

MAN'L JIMENO, *S'rio.*

I certify the foregoing to be a true and correct translation of the original Spanish document of the same tenor and date exhibited to me and filed in case No. 285, Guillermo Castro.

San Francisco, February 8th, 1853.

GEO. FISHER, *Sect'y.*

U. S. SURVEYOR GENERAL'S OFFICE FOR THE STATE OF CALIFORNIA.

I, Jno. C. Hays, U. S. surv. gen'l for California, and as such having in my custody the papers of the late board of land commissioners to ascertain and settle the private land claims in California, do hereby certify the foregoing to be a correct copy of a document on file in case No. 285 on the docket of said board, (endorsed) No. 285, Guillermo Castro, rancho of San Lorenzo. D. Translation of grant No. 2.

Filed in office July 8th, 1852.

GEO. FISHER, *Sec'y.*

Recorded in Record of Ev., vol. 7, page 295.

Given under my hand and seal of office, at the city of San Francisco, this 9th day of Dec., 1856.

[SEAL.]

JOHN C. HAYS,
U. S. Surv. Gen. Cal.

I, Geo. Pen Johnston, clerk of the circuit court of the United States for the dist's of California, do hereby certify the foregoing to be a true, full, and correct copy of the original translation on file in my office.

Witness my hand and the seal of said court, this 21 Feb'y, A. D. 1857.

[SEAL.]

GEO. PEN JOHNSTON, *C.*
CUTTER McALLISTER, *D. C.*

I have compared the foregoing translation with the original, on file herein, and find it to be accurate.

Feb'y 21st, 1857. SIDNEY L. JOHNSON.

Endorsed: Filed Feb'y 23d, 1857.

JOHN. A. MONROE, *Clerk*
By W. H. CHEEVERS, *Deputy.*

Certified copy of part of an Expediente in evidence by stipulation

[*For map see original, page* 156.]

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, John C. Hays, surveyor general of the United States for the State of California, and as such having in my office, and in my charge and

custody, a portion of the archives of the former Spanish and Mexican territory, or department of Upper California, by virtue of the power vested in me by law, do hereby certify, that the preceding and hereunto annexed page of tracing paper exhibits a true and accurate copy of a map attached to, and forming a part of a document on file in said archives, entitled "Espediente promovido por el ciudadano Guillermo Castro, en solicitud del parage conocido con el nombre de San Lorenzo."

In testimony whereof I have hereunto signed my name officially, and caused my seal of office to be affixed, at the city of San [SEAL.] Francisco, this 21st day of February, 1857.

JOHN C. HAYS,
U. S. Surveyor General for California.

Extract from the 2d section of the act of Congress "providing for the survey of public lands in California, and for other purposes," approved March 3d, 1855.

"The Secretary of the Interior is hereby authorized to cause an official seal to be prepared for the office of the said surveyor general, (California,) and any copy or extract from the plats, field-notes, and other records and documents on file in his office, when attested as such by the said seal and the signature of the surveyor general, shall, in all judicial matters, have the same force and effect as the original."

Admitted that the within is a true and correct copy of part of an expediente in Spanish, found among the archives of the Mexican government, now in the official possession of the surveyor general of the United States for California, dated San Francisco, February 21, 1857, and I consent that they may be put in evidence in this case.

WM. BLANDING, *Dis't Att'ys.*
SAUNDERS & HEPBURN,
Claimant's Att'y.

Sello Tercero un Peso.

Habilitado provisionalmente por la aduana maritima del puerto de Monterey, en el departamento de las Californias, para el año de mil ochocientos cuarenta y tres.

MICHELTORENA. MANUEL CASTANARES.
[L. S.]

Manuel Micheltorena, General de Brigada del Ejercito Mejicano, Ayudante General de la Plana may or delmismo, Gobernador, Comandante General é Inspector del Departamento de las Californias.

Por cuanto D. Guillermo Castro, ha pretendido para su beneficio personal y el de su familia, el parage conocido con el nombre de San Lorenzo, colindante con el rancho del S'or Amador, con el del S'or Moraga, con el de San Ramon, con el del S'or Peralta, con el del S'or Estudillo, con el del S'or Vallejo, con el de D. Fran'co Soto, por la parte del camino principal desde el arroyo del alto hasta el de San Lo-

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renzo, por consedirarse haberse hecho la consecion al mencionado Soto, por la parte de la playa, practicadas previamente las diligencias y averiguaciones, concernientes segun lo dispuesto por leyes y reglamentos, usando de las facultades que me son conferidas a nombre de la nacion Mejicana, he venido en concederle el terreno mencionado, declarandole la propriedad de el por las presentes letras, sujetandose a la aprobacion de la ex'ma junta departamental y bajo las condiciones siguientes.

1a. Podra cercarlo sin prejudicar las travesias caminos y servidumbres; y sin embarazar los egidos del pueblo de San José, cuando se le asignare, ni impedira, el que paseen los ganados de la mision, lo disfrutara libre y escluavam'te destinandolo al uso ó cultivo que mas le acomode.

2a. El terreno de que se hace donacion es de seis sitios de ganado mayor, sin comprender las seis cientas varas de terreno que ya estan concedidas por titulo anterior. El juez que diere la posecion lo para medir conforme á ordenanza que dando el sobrante que resulte a la nacion para los usos convenientes.

3a. Solicitara del juez respectivo que le de la posecion juridica, en virtud de este despacho por el cual se demarcaran los linderos en cuyos limites pondra a mas de las mojoneras algunas arboles frutales, ó silvestres de alguna utilidad.

4a. Si contraniere a estas condiciones perdera su derecho al terreno y sera denunciable por otro.

En consecuencia mando que sirviendole de titulo el presente y teniendose por firme y valedero se tome razon de el en el libro respectivo y se entreque al interesado para su resguardo y demas fines.

Dado en Monterey, á veinte y cinco de Octubre, de mil ochocientos cuarenta y tres.

MAN'L MICHELT'A.

MAN'L JIMENO, *S'rio.*

Queda tomada razon de este despacho en el libro respectivo á f. 2.

JIMENO.

El dia diez y seite de Enero, de mil ochocientos cuarenta y cuatro, por convenir que selebro D'n Carlos Castro, como apoderado de su hijo D'n Guillermo, con Don Fran'co Soto, resulte segun las actas que al efecto se estendieran que los limites del terreno del espresado D'n Guillermo Castro, seran desde el Sanjon que mira al Castado, de su casa por la parte del sur, y desde el mismo Sanjon por donde haga paralelo con ella, se mediran seis cientas varas para al camino principal y hasta donde concluyan se tomara una linea recta hasta el arroyo de San Lorenzo; debiendose reconocer por limites del otro lado del espresado Sanjon, la orilla de la Lomeria, que esta hacia el plan hasta donde se medad diez varas para las Lomas de arriba por la parte del Poniente. Y habiendo probado el E. S. Gobernador General D. Manuel Micheltorena el mencionado comvenio, mando se anotara en este titulo y lo firmó.

MAN'L MICHELT'A.

MAN'L JIMENO, *S'rio.*

OFFICE OF THE SURVEYOR GENERAL OF THE
UNITED STATES FOR CALIFORNIA.

I, John C. Hays, surveyor general of the United States for the State of California, and as such having in my office, and in my charge and custody, a portion of the archives of the former Spanish and Mexican territory or department of Upper California, and also the papers of the late board of land commissioners for the settlement of private land claims in California, by virtue of the power vested in me by law, do hereby certify that the four preceding and hereunto ann exed pages of tracing paper, numbered from one to four inclusive, exhibit a true and accurate copy of the grant issued by Gov. Micheltorena to Guillermo Castro, for a place called San Lorenzo, as the same is on file in case No. 285 on the docket of said commissioners, in which Guillermo Castro was claimant against the United States for said place of San Lorenzo.

In testimony whereof, I have hereunto signed my name
[SEAL.] officially, and caused my seal of office to be affixed, at the city of San Francisco, this 21st day of Feb'y, 1857.

JOHN C. HAYS,
U. S. Surveyor General for California.

Extract from the 2d section of the act of Congress "providing for the survey of public lands in California, and for other purposes," approved March 3d, 1855.

"The Secretary of the Interior is hereby authorized to cause an official seal to be prepared for the office of said surveyor general, (California,) and any copy or extract from the plats, field-notes, and other records and documents on file in his office, when attested as such by the said seal and the signature of the surveyor general, shall, in all judicial matters, have the same force and effect as the original."

Admitted that the within is a true and correct copy of part of an expediente in Spanish, found among the archives of the Mexican government, now in the official possession of the surveyor general of the United States for California, dated San Francisco, February 21st, 1857, and to be used in evidence.

WM. BLANDING, *Dist Att'y.*
SAUNDERS & HEPBURN,
Claimant's Att'ys.

Endorsed: Filed Feb'y 23d, 1857.
JOHN A. MONROE, *Clerk.*
By W. H. CHEEVERS, *Deputy.*

[*For map see original, page* 163.]

No. 42. [illegible]

Translation of Map as Evidence by Stipulation.

The within admitted to be a correct translation of the map in the expediente filed herein, marked Ex. 2, A. F., annexed to the deposition of Juan B. Alvarado, taken on the 11th of November, 1853, to be used in evidence before the commissioners of the United States to settle land claims in California, in this case, being claim of José J. Estudillo to rancho San Leandro, No. 256 of said commissioners, and No. 234 in the dist. court of the United States for the northern district of California, upon appeal.

21st Feb'y, 1857.

WM. BLANDING, *Dist. Att'y.*
SAUNDERS & HEPBURN,
Att'ys for Claimant.

Endorsed: Filed Feb'y 23d, 1857.

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Translation of Expediente to the rancho San Leandro, including petition, vista la peticion, and titulo, or title.

EXMO SOR.: The citizen José Joaquin Estudillo, a Mexican by birth, before your excellency appears through these presents, saying: That with the object of securing the subsistence of and supporting a large family, consisting of his wife and ten children, after having been in the military service for a period of 17 years, 4 months, and seven days, he solicited, under date of January 8th, 1837, the land known as the "Arroyo de San Leandro to that of San Lorenzo," four square leagues of land (4 sitios de ganado mayor,) from west to east; and having obtained from your excellency, who is kind to, and protects the interests of, the inhabitants of this country, that I should establish myself and continue working until the legal proceedings were gone through, which I have done during the long term of five years, 5 months, and several days, and as my expediente has been mislaid in the government secretary's office, I now make a new petition, duly accompanied by the annexed draught or plan of the said land, that in view thereof you will act as it may please you, remaining perfectly satisfied with your decree; consequently I entreat your excellency to view my petition in a favorable light, so that I may receive the favor that I ask for and expect, paying to your excellency as homage my eternal gratitude.

JOSE JOAQUIN ESTUDILLO.

Monterey, June 28th, 1842.

MONTEREY, *Oct.* 16*th*, 1842.

In view of the petition that heads this expediente, the informations that were considered necessary to take, and everything else that was thought of, having found that they agree with the laws and regulations on this subject, I declare Don Joaquin Estudillo owner in possession

of a part of the land known under the name of San Leandro, bounded on the north by the "Arroyo San Leandro," on the east by the drainings of the springs, on the land occupied by the Indians now settled there; from this point in a straight line south to the Arroyo San Lorenzo, without including the lands cultivated by the above mentioned Indians, and on the west by the sea. Let the necessary document be issued, take note of it in the Book of Record, and send this expediente to the exma. junta departmental for its approbation. His excellency, the governor, has thus ordered, decreed, and signed it.

J. B. Alvarado, Constitutional Governor of the Department of the Californias.

Whereas the citizen Joaquin Estudillo has petitioned, for his personal benefit and that of his family, for a part of the land known under the name of San Leandro, the boundary of which being, on the north the Arroyo San Leandro, on the east the drainage (deramaderos) of the springs in the lands occupied by the Indians now settled there; from this point in a straight line south to the "Arroyo de San Lorenzo," without including the lands cultivated by the Indians already mentioned; and on the west by the sea; having previously taken all the necessary steps and investigation ordered by the laws and regulations on this subject:

In virtue of the powers conferred on me in the name of the Mexican nation, I hereby decide to grant him the land mentioned, giving to him the right of possession thereof by these presents, and by the approbation which he has obtained from the "Exm'a Junta Departmental," being subject to the following conditions:

1st. He has the power to fence it without interfering with the passages, roads, and other rights (servidumbres); he shall enjoy it freely and exclusively, applying it to any use or culture that may be most agreeable to him, but within a year he shall build a house, and said house must be inhabited.

2d. He shall solicit to be placed in lawful possession in virtue of this document, from the competent judge by whom the boundaries shall be marked out, and on their borders he shall, besides placing the landmarks, plant some fruit trees or forest trees of some utility.

3d. The land granted is one square league, (one sitio de ganado mayor,) a little more or less, as it is shown by the sketch annexed to the expediente on this matter.

The judge who shall place him in possession must have the land measured according to law, leaving the remainder for the uses the nation may decree proper.

4th. Should he contravene these conditions he shall lose his right to the land, and it shall be denounced by any other person.

In virtue whereof I order this title, being good and valid, that copy

of it be taken in the book of record, and that it be delivered to the party interested for his security and other ends.

Given in Monterey, 16th Oct., 1842.

SAN FRANCISCO, *Dec'r 8th*, 1856.

Translated by GUN'MO ELIZONDO.

SAN FRANCISCO, *9th Dec'r*, 1856.

I hereby certify that I am well acquainted both with the Spanish and English languages; that I am in the habit of translating from Spanish into English, and from English into Spanish, for the use of courts of justice and individuals; that I have examined the foregoing translation with care, and that I know it is minutely correct and accurate. J. ARGAS.

I have examined the foregoing translations and carefully compared them with the originals, and I find them accurate, with the exceptions of three passages which I have underlined, and opposite which, in the margin, I have placed the Nos. 1, 2, 3. In place of the words underscored, opposite No. 1, I would place, "and which it was proper to look to in conformity," as a translation of the words "y er combino, de conformidad;" in place of the word possession in each of the two other passages, Nos. 2 and 3, I would place "property," the original being "propriedad."

San Francisco, Feb'y 21st, 1857.

SIDNEY L. JOHNSON.

The within translation, as corrected by Sidney L. Johnson, esq., is filed by consent, as the translating (in place of the original translating) of the expediente of the rancho San Leandro, annexed to the deposition of Juan B. Alvarado, taken in this case, (No. 256 of cases before the land commissioners of the U. S. to settle land claims in California,) on the 11th day of November, A. D. 1853, to be used before the land commissioners aforesaid, in said case, marked Ex. 2, A. F., as if sworn to according to law herein by said Sidney L. Johnson, and the within named translators, Gun'mo Elizondo and J. Argas.

San Francisco, Feb'y 21st, 1857.

WM. BLANDING, *Dist. Att'y.*
SAUNDERS & HEPBURN,
Att'ys for Claimant.

Endorsed: Filed Febru ry 23d, 1857.
JOHN A. MONROE, *Clerk.*
By W. H. CHEEVERS, *Deputy.*

Deposition of R. C. Hopkins.

UNITED STATES DISTRICT COURT,
Northern District of California.

SAN FRANCISCO, *Feb'y* 20, '57.

On this day, before John A. Monroe, a commissioner of the United States for the northern district of California, duly authorized to ad-

minister oaths, &c., &c., came R. C. Hopkins, a witness produced on behalf of the claimant, in case No. 234, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 256 on the docket of the said board of commissioners, and was duly sworn, and testified as follows. Present, John Saunders, esq., of counsel for claimant, and W. Blanding, esq., U. S. dist. att'y.

Question by Counsel for Claimant.

What is your name, age, and occupation?

Answer. I am thirty-six years of age, and am a clerk in the surveyor general's office for the State of California. The records of grants in the surveyor general's office are in the shape of expedientes, which consist of a collection of the documents and proceedings in relation thereto; there are, I think, five hundred and seventy nine of these regular expedientes; there are also some three hundred and thirteen incomplete expedientes; there is a book of records, besides, called Book of Titles during Figaro's time, in which many of the titles are recorded; there is no book record of titles made after that time. There is a book called "Toma de Razon;" in some, grants of '44 and '45 are entered. There is an index entitled "Index;" the lands adjudicated and the persons to whom conceded, entitled "Indice de los terrenos y persones a quienes se les ha concedido." The last number on the index is 433; at the end of the index is a certificate signed by Manuel Jimeno, as follows:

(The certificate is in Spanish, and the translation is as follows: This index is now before me):

"In this index there is the number of 433 expedientes, but by mistake there has been passed in the numbering from 329 to 340, having followed in numbering the last number."

(It is here stipulated by the counsel for the United States, and the counsel for claimant, that a copy of entry in said index, relating to the rancho San Leandro, and of the title of said index and certificate of Jimeno, aforesaid, may be used in evidence, without transcribing the whole of said index in evidence, which said entry, title and certificate are contained in a paper hereto annexed, marked A.)

There are no books except those I speak of, Record of Titles, in the surveyor general's office.

The title of San Leandro is not recorded in any of the books I have spoken of except in said index.

Cross-examined.

There is an expediente in the archives, in the surveyor general's possession, of rancho San Leandro, No. 300.

R. C. HOPKINS.

Exhibit A.—Yndice de los terrenos adjudicados y personas a quienes se les ha concedido.

Las Virgenes -	Conced'o	á José Ma. Dominguez - -	1
		* * * * *	
		* * * * *	
San Leandro -	C'do -	á D'n Joaquin Estudillo - -	300
		* * * * *	
Putas - -	C'do -	á D. José de Jesus Berneyesa -	433

En este indice hay el numero de 433 espedientes; pero pr. equivocacion se pasa en la numeracion del 329 al 340, habiendo seguida en la misma.

MAN'L JIMENO.

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, John C. Hays, surveyor general of the United States for the State of California, and as such having in my office, and in my charge and custody, a portion of the archives of the former Spanish and Mexican territory or department of Upper California, by virtue of the power vested in me by law, do hereby certify that the preceding and hereunto annexed page of tracing paper exhibits a true and accurate extract of an index on file in said archives.

In testimony whereof, I have hereunto signed my name offi-
[SEAL.] cially, and caused my seal of office to be affixed, at the city of San Francisco, this 20th day of Feb'y, 1857.

JOHN C. HAYS,
U. S. Surveyor General for California.

Extract from the 2d section of the act of Congress "providing for the survey of public lands in California, and for other purposes," approved March 3d, 1855.

"The Secretary of the Interior is hereby authorized to cause an official seal to be prepared for the office of said surveyor general, (California,) and any copy or extract from the plats, field-notes, and other records and documents on file in his office, when attested as such by the said seal and the signature of the surveyor general, shall, in all judicial matters, have the same force and effect as the original."

Deposition of M. B. de Valencia.

Marie Bernardo de Ante de Valencia, being duly sworn through Sam. J Terrett, a sworn interpreter, says:

I am 42 years of age, and reside in San Rafael.

In '41 I resided in Yerba Buena, (now San Francisco,) and in '42 I removed to San Leandro. I lived there from '42 to '43, by permission of Don Joaquin Estudillo. My husband was taking care of the cattle of his father. I lived in the lower part, a little above the lower paso. The lower paso was the only paso that wagons could pass when the arroyo was very high. The arroyo was the arroyo of San Lorenzo. We had a house there and resided there continually.

The family of Estudillo (Don José Joaquin) occupied the rancho of San Leandro. According to my knowledge, the boundaries were from arroyo San Leandro, and arroyo San Lorenzo. Myself and my husband got permission from Estudillo to live on the rancho. There were Indians living on the rancho at the time. The Indians were known as San Leandro Indians. There were two brothers known as Sylvestre and Annisitti, and they had families. Sylvestre had two children and Annisitti one. There were some other Indians living on the south side of the rancho. The south side I speak of is the Paso Viejo. There were no other Indians living on the rancho but those I have spoken of. Annisitti and Sylvestre lived on the little hills in an adobe house. They cultivated about two acres and one-half close to the house, a little lower down on the hill, about thirty or forty varas from the house. They raised corn, frigoles, water-melons, and pumpkins. Some old Indians who could not work came there and took care of the sheep for the mission. They were not permanently there, but returned to the mission in the winter. Annisitti and Sylvestre lived permanently there. I knew them well, and have been at their house many times. I can't say certainly whether the Indians sowed wheat or not, but as a general thing they got their wheat from the mission. The lower pass near which I lived, which I have described before, was the one carts passed when the water was high. The next one above was close to a willow patch. The next one was still higher, and only used to pass on horseback; carts could not pass there; and this is one I call Paso Viejo. The willows were near the Paso Viejo. I know of no cultivation made by Annisitti and Sylvestre, except what I have spoken of.

Cross-examined.

I lived about a half a mile from the beach. I lived about fifty yards from the lower pass, and more than a mile from the Indians on the south side. I knew some of the Indians by sight, but don't remember their names. The Indians had places made of boughs and grass. They made small fences, which lasted until the crops were gathered, and then they were used for fire-wood. The Indians on the south side, some of them, lived there all the while. Some one or two would remain, and the rest go to the mission and then return, and the other or others would go to the mission. When they were all there they cultivated, at the most, three or four acres. There were always one or two remaining, because there were some sheep to be taken care of. They had, perhaps, 500 sheep under their charge belonging to the mission. From

the place where these Indians lived to the Paso Viejo was about one mile and a half. I got my knowledge of the boundaries from Estudillo, who gave me permission to go there. He told me he claimed to where the Indians lived, starting from the bay and going up the creek. He told me he claimed all the land on the northern side of the creek, up to where the Indian brothers lived. I lived about a league from Estudillo. I lived on the edge of San Leandro creek. I am no great judge of distance, but I come as near as I can to the truth.

her
MARIE BERNARDO DE ✕ ANTE VALENCIA.
mark.

Sworn to before me, this 20th Feb'y, A. D. 1857.

JOHN A. MONROE,
U. S. Commissioner.

Endorsed: Filed Feb'y 23d, 1857.

JOHN A. MONROE, *Clerk.*
By W. H. CHEEVER, *Deputy.*

Deposition of Jas. T. Stratton.

UNITED STATES DISTRICT COURT,
Northern District of California.

SAN FRANCISCO, *Feb'y* 14, 1857.

On this day, before Cutler McAllister, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came James T. Stratton, a witness produced on behalf of the claimant, in case No. 234, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 256 on the docket of the said board of commissioners, and was duly sworn and testified as follows:

Present, Saunders & Hepburn for claimant, and the U. S. dist. att'y.

Questions by Attorneys for Claimant.

Question 1. What is your occupation?

Answer 1. I am, at present, deputy surveyor of the county of Alameda.

Question 2. Do you know the rancho San Leandro? If so, state where it is situated, and what is the occasion of your knowledge of it.

Answer 2. I know the rancho San Leandro; it is situated in the county of Alameda. I have been employed to make surveys on the ranch by Messrs. Ward & Davis, who married two of the heirs of Estudillo.

The boundaries by which I surveyed it were by the San Leandro creek on the north; on the east by a line drawn from a small pond, southerly, to the San Lorenzo creek, so as to touch and exclude the remains of an adobe building occupied by an Indian; on the south by the San Lorenzo creek, and on the west by the bay of San Francisco.

The pond at which I commenced the eastern line is situated six or seven chains from the San Leandro creek, in the first or foot-hills. I also ran another easterly boundary, commencing at the pond which I have described above, and running south 29° east, until it intersects the San Lorenzo creek; it was designated by the claimant as the Rodeo line of said rancho.

[Here the attorneys agree that the witness may give his testimony without formal interrogatories to be written down in the deposition.]

I have made a calculation of the quantity bounded on the east by the first mentioned line, and found the quantity to be about six thousand six hundred acres, more or less. The variation from that estimate could not have exceeded or fallen short of that more than thirty acres. This estimate excluded overflowed lands.

The springs are located between what has always been known as the adobe house line, which is the first mentioned line, and the Rodeo line, and their general direction would bisect the angle between the two lines. The (diramaderos, or) place where the springs lose themselves, are about west of the adobe house before mentioned, and extend not more than one-eighth of a mile from the adobe house, which is a marshy place where the waters sink. A line drawn from the middle of the diramaderos, due south to the San Lorenzo creek, would strike the said creek about a quarter of a mile westerly from the termination of the adobe house line, and would make the rancho include a hundred acres less than the adobe house line to which I have testified would. The difference between the survey of Mr. Nicholas Gray, made in November, 1855, and mine, in the eastern boundary alone—his eastern line was more to the east than mine, and included about seventeen hundred acres more than the adobe house line; that would make the estimate of quantity of Mr. Gray and myself agree, excluding the overflowed and marsh lands. The diramaderos are just at the base of the first range of hills from the bay.

The creeks of San Leandro and San Lorenzo are very plainly defined boundaries.

Cross-examination.—Questions by the U. S. Dist. Att'y.

The adobe house is situated about midway between the two creeks, and on the first rise from the plain on the very lowest of the foot-hills. The diramaderos cover an extent of twenty-five or thirty acres. I do not know the lands which the Indians cultivated in 1842; there are no marks by which I could distinguish whether there have been fields cultivated by the Indians.

The distance from the adobe house to the San Lorenzo creek, by the adobe house line, is about a mile and three-eighths. The survey I made was by request of Messrs. Ward and Davis, and in conformity to their requests. The adobe house line passes to the east, and just touches the easterly side of the diramaderos or marsh. The direction of the adobe house line is south 14° east.

Direct Examination resumed.

The diramaderos are marked natural objects. If the li ne from the diramaderos south to the San Lorenzo creek, to which I testified in my examination in chief, were extended north, it would intersect the San Leandro creek about a quarter of a mile easterly of the pond before mentioned, and the addition of quantity by this extension would make the rancho of the same quantity as I testified to at first. A line running from the diramaderos 4 50 west would strike the bay, and not touch the San Lorenzo creek.

JAS. T. STRATTON.

Subscribed and sworn to before me, Feb'y 14, 1857.

CUTLER McALLISTER,
U. S. Commissioner.

Endorsed: Filed Feb'y 25th, 1857.

JNO. A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Deposition of Felipe Fierro.

UNITED STATES DISTRICT COURT,
Northern District of California.

SAN FRANCISCO, *Feb'y* 17, '57.

On this day, before Cutler McAllister, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Felipe Fierro, a witness produced on behalf of the claimant, in case No. 234, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 256 on the docket of the said board of commissioners, and was duly sworn, and testified as follows, his evidence being interpreted by Cypriano Shurn, a sworn interpreter.

Present, Saunders and Hepburn on behalf of the claimant, and the U. S. dist. att'y.

Questions by Attorney for Claimant.

Question 1. Your name, age, and place of residence?

Answer 1. Felipe Fierro; 29; San Francisco.

Question 2. How long have you lived in San Francisco?

Answer 2. In San Francisco 5 years; in the State of California 7 years and a half.

Question 3. Where were you living in 1850?

Answer 3. In San Francisco; I have lived in San Francisco, at different times, about 5 years.

Question 4. What was your occupation in 1850?

Answer 4. I was a trader in Chili produce.

Question 5. What is your occupation now, and since 1850 what has been your various occupations?

Answer 5. My occupation now is agent and produce commission merchant. I have had different occupations since 1850. I was during

two years and a half consul from Chili and agent of Chilian principals, and farming pursuits.

Question 6. Did you know Joaquin Estudillo; if so, when did you make his acquaintance?

Answer 6. I made his acquaintance in 1849, and he used to come frequently to my office, in San Francisco.

Question 7. Did you know one Marcus Squello; if so, when?

Answer 7. I knew him first in 1849. He arrived here in the Chilian ship Confederation, and left in the Chilian ship Merceda to go to Chili in November, 1851. He is now dead.

Question 8. When and where did he die?

Answer 8. He died in Lima, Peru, in April, 1853, according to letters I received from his partner.

Question 9. Were you ever present at a meeting of said José Joaquin Estudillo and Squella? if so, state when, where, and what occurred.

Answer 9. In April or May, 1850, Squella being at my store, Don Joaquin Estudillo came there for the purpose of making some purchases, after making which he left. Squella then inquired of me who that gentleman was. This was in Jackson street, at my store. When I told him it was Don J. J. Estudillo, he said: Ah! I have heard of him as being a rancherio, living in the Contra Costa.

[Witness explained the term of "Contra Costa," as meaning the counties of "Alameda and Contra Costa."]

Question 10. What was the appearance of Estudillo; was it observable?

Answer 10. It was; and he was a very short and stout man, remarkable for his size.

Cross-examination.

Question 1. When did you arrive in California?

Answer 1. I arrived on the 16 September, 1849, in the ship Martinicasee. Squella was here when I arrived, and was the first person to whom I spoke, as I had letters to him. Squella arrived here about the last of February or beginning of March, 1849. I do not recollect of Squella saying any thing more to me after Estudillo left us in the store. At that time Squella never said any thing to me about his having at any time offered to purchase lands of Estudillo. Esquella at that time never said a word about having been over and having seen the ranch of Estudillo; nor did he say any thing about Newland's having offered to purchase any part of the San Leandro ranch. I knew Newland. He was a broker, and I purchased a lot through his aid. He was also a custom-house broker. I do not know when he arrived, but he told me that he came here in the "Chateaubriand." I know that she left Valparaiso in March or April, 1849. I think this was the date. The voyage from Valparaiso averaged about 50 days.

Direct Examination resumed.

Question 1. Did you ever at any time hear Squella or Newland speak of purchasing the San Leandro ranch, or any part of it?

Answer 1. Never. FELIPE FIERRO.

Subscribed and sworn to before me this Feb'y 17th, 1857.
CUTLER McALLISTER,
U. S. Commissioner.

Endorsed: Filed Feb'y 25th, 1857.
JNO. A. MONROE, *Clerk.*
By W. H. CHEEVERS, *Deputy.*

Deposition of Edward A. King.

UNITED STATES DISTRICT COURT,
Northern District of California.

SAN FRANCISCO, *Feb'y 17th*, 1857.

On this day, before Cutler McAllister, a commissioner of the United States for the districts of California, duly authorized to administer oaths, &c., &c., came Edward A. King, a witness produced on behalf of the claimant in case No. 234, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 256 on the docket of the said board of commissioners, and was duly sworn and testified as follows.

Present, Saunders & Hepburn on behalf of the claimant, and U. S. dist. att'y.

Questions by Attorneys for Claimant.

Question 1. What is your name, age, and place of residence?

Answer 1. Edward A. King; I am 38 years of age; residence in San Francisco.

Question 2. Have the goodness to state where you were and what was your occupation in the months of March, April, and May, 1849.

Answer 2. I was in San Francisco; my occupation was harbor master and surveyor of the port.

Question 3. Do you remember whether the French ship "Chateaubriand" came into the port of San Francisco during those months; and if so, when?

Answer 3. I do; April 19th, 1849.

Question 4. Did your office afford you any peculiar occasion to observe her arrival, and was it your duty to do so?

Answer 4. My duty was to certify the papers of every ship before she could be entered at the custom-house; I did so with that ship.

Question 5. Did that ship come into this port in those months, or thereabouts, more than once?

Answer 5. She did not.

Question 6. Is your recollection distinct of her coming here on that day, as you have testified?

Answer 6. Perfectly; I boarded her on her arrival on that day.

Cross-examination.

Question 1. Where did the "Chateaubriand" come from?

Answer 1. Bordeaux, by way of Valparaiso.

Question 2. What was her master's name?

Answer 2. Egmond.

Question 3. Have you a list of the passengers that came by her?

Answer. 3. I have not; they were burnt up in my office at Clark's Point in May fire, 1849.

Question 4. Do you know, or have you got upon your book, the name of any other ship of the name of Chateaubriand, which arrived on or about the 2d March, 1849?

Answer 4. I know of none, and have none other on my book, which is the record of arrivals during my term of office.

Question 5. On what date does your book begin?

Answer 5. On March 26th, 1849.

Question 6. Was that the beginning of your official term?

Answer 6. No, sir; my official term commenced on the 8th of March.

Direct Examination resumed.

Question 7. Do you positively know that no other ship of that name arrived since the beginning of 1849 in the port of San Francisco?

Answer 7. There was no vessel of that name arrived from the 1st of January, 1849, until April 19th, 1849.

EDWARD A. KING.

Subscribed and sworn to before me this 17th Feb'y, A. D. 1857.

CUTLER McALLISTER,
U. S. Commissioner.

Endorsed: Filed Feb'y 25th, 1857.

JNO. A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Deposition of Guillermo Castro.

UNITED STATES DISTRICT COURT,
Northern District of California.

SAN FRANCISCO, *Feb'y 14th*, 1857.

On this day, before Cutler McAllister, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Guillermo Castro, a witness produced on behalf of the ——— in case No. 234, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 256 on the docket of the said board of commissioners, and was duly sworn, and testified as follows.

J. H. Blood.

Present, Saunders and Hepburn, att'ys for claimant, and U. S. dist. att'y.

Questions by Attorneys for Claimant.

(It is agreed by attorneys that the questions should not be written down.)

I live in and own the rancho of San Lorenzo; I have lived there

twenty years; it is situated in the county of Alameda, adjoining on the east the rancho of San Leandro. The deceased, Estudillo, has been occupying the rancho San Leandro, more or less, during the same time until his death, and his family have been occupying it since. An Indian by the name of Sylvester had a house there in 1842; he had a family; he had two sons and his brother, Annisetti; these were the only Indians that lived there at that time; this was in 1842, and shortly before and after that I speak of. At that time they had an adobe house; it was built by Vallejo, who was administrator of the Indians, and three or four acres of ground cultivated immediately around it, but without an enclosure. There was a cultivation by other Indians not belonging to that rancho, always coming and going at the Paso Viejo or Rincon, and between that and the Sausal. The Sausal is about one hundred yards northwest of the arroyo, and the Indians' cultivation was between the two, and on the bank of the arroyo. The Rincon of which I speak is the west part of the bend in the creek San Lorenzo, through which the old road ran. The Indians were between the old road at that time and the Rincon. Being the owner of the adjoining rancho, I saw these Indians every day, and I knew exactly what Indians belonged there, and where they were located, and the extent of their cultivation. Their cultivation consisted of a few water-melon patches and a little corn; they turned up the ground with sticks. The whole cultivation did not cover more than two or three acres. I knew the family of Sylvester, the Indians then belonging to their rancho, very well. Sylvester's sons are now living in my house; their names are José and Elias. I think that Sylvester died in 1845, and I am certain that he was dead when the Americans "raised the flag." The adobe house occupied by the Indians was situated on the first hill (or lomita) from the bay, near the principal spring (or agrage). There were a great many springs near the Indian house. Those springs running on to the plains disappear at the foot of the hills. When it is dry the waters lose themselves at the foot of the hill, and when it is raining they scatter and cover more space. The ruins of the adobe house can still be seen.

The Rincon about which I have testified as the Paso Viejo, is the largest bend of the San Lorenzo creek; Estudillo cultivated near the Paso Viejo; also, he had fifty acres enclosed and under cultivation at that place; Estudillo, during his occupancy of that rancho, had on it from two to three thousand head of stock.

Cross-examination.

I think that in the year 1842 the family of the Indian Sylvester Annisetti were the only Indians living on that rancho; there were no other permanent Indian cultivations below Sylvester's house, towards the bay; there were no permanent Indian cultivations in 1842 between the Paso Viejo and the bay, on or near the line of the San Lorenzo creek. A Californian named Bruno Valencia was living on the San Lorenzo, between the Rincon and the bay; he was there by permission of

Estudillo and myself; there were no other settlements but what I have mentioned, between the two creeks, the San Leandro and San Lorenzo, the foot-hills and the bay, by Indians.

GUILLERMO CASTRO.

Subscribed and sworn to before me this 14th Feb'y, 1857.

CUTLER McALLISTER,
U. S. Commissioner.

Endorsed: Filed Feb'y 25th, 1857.

JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Evidence of José Francisco Palamarez.

UNITED STATES DISTRICT COURT,
Northern District of California.

JOSE JOAQUIN ESTUDILLO
vs.
THE UNITED STATES.

(José Francisco Palmarez's Evidence.)

Have lived 25 years in California; know the rancho of San Leandro; have known 12 or 14 years; knew José Joaquin Estudillo; knew some Indians on the Willow grove, on the San Lorenzo; I knew of a line from the White Stone to the Strawberry Patch; I was one of those who carried the cordello at the request of the alcalde of San José; I know nothing more, or why it was done; this was in 1843 or 1844. The Strawberry Patch is about a league on the beach, from the mouth of the San Leandro, and about as far from the mouth of the San Lorenzo. It was about one league from the San Leandro, about half way between mouths of two creeks. The White Rock was on the north of the hills of the San Lorenzo, about one league from San Leandro. I know where the adobe of the Indians was. The White Rock was about 1,000 varas from the adobe in a northerly direction. A line from the White Rock to the Strawberry Patch would pass the house about 1,000 varas distant. When we ran this line, there were present Dolores Pacheco, Carlos Castro, José Maria Flores. They are all dead. I don't remember who else; some boys. Estudillo was there during the whole time. There were no writings made by the alcalde concerning this line, to my knowledge. There were no Indians present. After the measurement of the line they came together and began to dispute, and as they did not pay me for my labor I went away. I don't know what they were disputing; nor anything more about it.

Cross-examined.

Zennon Fernandez was present; he was the surveyor; I don't recollect the precise year—it was in 1843 or 1844; can't say whether it was

in '40; can't speak with certainty in regard to the year; can't say whether Estudillo protested against the survey or not—don't know; for as soon as they began to dispute I went away.

Direct Examination resumed.

I cannot recall the time by any event which would fix the time. I do not know how to read or write. It was a long time before the American war; might have been 13 or 14 years before the war. Alvarado was governor at the time of the measurement. I had no idea of the object of running the line.

Evidence of Ignacio Peralta.

(Ignacio Peralta's evidence.)

Have lived in California 66 years; was born here. I don't know which rancho is called San Leandro. I have one on the north, and Estudillo has one on the south side of San Leandro. My ranch is not called San Leandro. I don't know the name which has been given to the rancho on the south side of the San Leandro. I knew José Joaquin Estudillo. I knew the Indians Sylvester and Annisetti. They lived at the mission when I knew them. In 1840, '41, '42, and '43 they lived between the creeks San Leandro and San Lorenzo, at a creek there is there.

Do you know of any line between the Indian possessions and those of Estudillo?

[Question objected to by pl'ff; obj. overruled. Exception.]

I do not know of any such line. I saw a line drawn from the embarcadero of San Leandro to the Willow grove, near the marsh of the San Lorenzo. I never have been present at the drawing of any other line on those lands. The embarcadero of the San Leandro is about a league from its mouth, and is the place to which boats come, and the line was drawn from thence to the Willow grove, near the marsh of the San Lorenzo. The old embarcadero was at a willow about 100 varas above the embarcadero of the present day. The boats used to make fast to the willows. When they had drawn this line to the grove at the marsh of the San Lorenzo, they went from there measuring a line towards the hills. They went from the wood at the marsh measuring a line upwards towards the hills. The line went in the hills, passing by the house near the spring. They dismounted, and I left. The line passed on the northern side of the house. Don't recollect who lived in the house. The house was as far off from the San Leandro as it is now; can't say how far—perhaps 1,000 varas. It is nearer to the San Lorenzo than to the San Leandro. There is a rock on the hills at which lime is made. There are various rocks there where they have made lime. I don't know which is intended. I know of no rock distinguished as a white rock. I have lived within 200 varas of Estudillo, perhaps 12 years. Before that I lived in San Antonio, where my brother is; that is about 2 leagues from Estudillo's. I lived there 24 years. No one held possession of the land where Estudillo lived be-

fore him. The priests of the mission were owners of the place, and sent their sheep to pasture sometimes in one place and sometimes in another. There were Indians on the San Lorenzo side towards the mission on the south.

Cross-examined.

I can't recollect in what year this line was drawn. Alvarado was governor at the time. Can't say how long it was before Micheltorena. The line was drawn by a Mexican surveyor (not Fernandez,) who came with Pacheco, the judge, to measure these lines and make a report to Governor Alvarado. There were present Palamarez, who was here yesterday, and others who are dead; Estudillo came there, staid a little while, and then went away. The surveyor was Zennon Fernandez. I recollect now he was a Mexican; I did not remember his name at first. I don't know whether they put anything in writing. Estudillo has been on the rancho about 20 years—18, or 19, or 20 years since he came there.

Question. In the years 1840, '41, '42 and '43, of what land was Estudillo in possession? Describe his stock, and what land he used for the purpose of his stock.

[Question objected to by deft's.]

Ans. He had cattle, horses and sheep. He had a considerable quantity of stock, more than 500 head; I think he had more than 1,000. I, myself, marked more than 400, and Estudillo marked more than I did; I therefore think he had more than I.

Question. What land south of the San Leandro did he occupy for the pasturage of these cattle?

[Question objected to by def'ts.]

His cattle extended all over the level ground between the two creeks, and up on the hill-sides; and, as there were no fences, sometimes went beyond his limits upon my land. Some of the cattle were wild, but not so wild as not to be driven into the rodeos. The wild were driven into the corrals with the tame; they were all corralled together. He had not had judicial possession given him, but took possession for his rodeo limits of the land between the creeks and the hills.

[This last answer objected to by def'ts as incompetent.]

Stipulation to admit Evidence of José Francisco Palamarez and Ignacio Peralta.

District Court of the United States for the northern district of California.

JOSE JOAQUIN ESTUDILLO vs. THE UNITED STATES. } No. 234.

On appeal from the land commission of the United States, to settle land claims in California, No. 256.

It is stipulated that the foregoing evidence of José Francisco Palamarez and Ignacio Peralta, (being copies of the judge's notes in the

case of Boyrean vs. Campbell et al., an ejectment for part of the rancho of San Leandro, in the circuit court of the United States for the districts of California, northern district,) may be used before the district court of the United States for the northern district of California, in the case No. 256 of the land commission, and No. 234 before the district court, (upon appeal) being the case of José Joaquin Estudillo vs. The United States, for the Rancho San Leandro, subject to legal exceptions, except the mode of taking the same, and as if said testimony had been regularly taken before a commission of said court.

Dated San Francisco, March 4, 1857.

WM. BLANDING, *Dist. Att'y.*
SAUNDERS & HEPBURN,
Claimant's Att'y.

Endorsed: Filed March 4th, 1857.

JNO. A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Deposition of Ramon De Zaldo.

UNITED STATES DISTRICT COURT,
Northern District of California.

SAN FRANCISCO, *M'ch* 11, '57.

On this day, before Cutler McAllister, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Ramon De Zaldo, a witness produced on behalf of the United States, in case No. 234, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 256 on the docket of the said board of commissioners, and was duly sworn and testified as follows.

Present, Saunders and Hepburn for claimant, and the U. S. dist. att'y.

Questions by U. S. Dist. Att'y.

I am well acquainted with both English and Spanish. I have examined the document marked "Appendix X Y Z," and find the Spanish words in said document to be translated thus: "The boundaries being on the north side with the creek of San Leandro, at the east with the spreadings of the water springs in the lands occupied by the Indians, actually therein established; from this point taking a straight line on the south side until reaching the Arroyo San Lorenzo, without including the lands cultivated by the above mentioned Indians, and at the west by the sea."

Question. Examine the document marked "Appendix" X Y Z, and say from that description what is the southern boundary of the tract of land as defined on the map?

[Question objected to on the ground that the translation must speak for itself, and any other definition of the boundary in reference to the map is only an opinion of the witness, and not evidence.]

Answer. The document by itself conveys the description of the southern boundary as marked in their map or diagram all along the south side of the map, and described by a straight line as starting from a secant point of the eastern line, and ending at a point here called Arroyo de San Lorenzo; the line to which I allude is part of that one called in the map the divisory line in longitude, or, as it is marked on the map, "Linea divisoria en longitud."

Cross-examination.

This line I have described is the one that corresponds to the description in the decree. I do not say that that is the boundary of the rancho. I only know that it corresponds with the description of the line given in the decree.

Question. If the line you have described as the southern line be the southern boundary of the rancho, what explanation can be given of the fact that it runs a long distance east of the secant point into the hills?

Answer. If I am left to fancy, I may give as an explanation that there seems to have been a controversy between several parties, even under the Mexican government, from the fact that they have marked dividing lines outside of the whole tract; but it is no fancy, but conviction, that the decree itself marks certain reservation in behalf of the lands cultivated by the Indians which are not to be embraced.

I have no knowledge of the extent of that land reserved, and it may extend a good ways to the eastward of the dividing line marked here in latitude; my having fixed in my mind as the eastern line the one called Linea divisoria en latitude to the secant point is from the painting of the spreadings of the marks for water springs, as they are generally painted in maps, and particularly those of this nature; furthermore, my stopping at that secant point is derived from the decree itself, as that is the eastern and not the southern line; and it does not direct to go to the south, but to follow all along to the south side, measuring from east to west along the south side.

RAMON DE ZALDO.

Sworn and subscribed before me, this 11th March, 1857.

CUTLER McALLISTER,
U. S. Commissioner.

Deposition of Domingo Danglada.

UNITED STATES DISTRICT COURT,
Northern District of California.

SAN FRANCISCO, *March* 11, 1857.

On this day before Cutler McAllister, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Dom'o Danglada, a witness produced on behalf of the , in case No. 234, being an appeal from the board of commissioners to ascertain and settle the private land claims

in the State of California, in case No. 256 on the docket of the said board of commissioners, and was duly sworn and testified as follows.

Present, Saunders & Hepburn for claimant, and U. S. dist. att'y.

Questions by U. S. Dist. Att'y.

Domingo Danglada; I live at the mission Dolores; I have lately been translator for the State; I am a Spaniard; I have examined the document marked "Appendix X Y Z," and I find the translation of the Spanish in that document to be, "being the boundary on the north side with the Arroyo of San Leandro; at the east with the spreadings of the water springs of the lands that are occupied by Indians, who are actually established; from this point taking a straight line on the south side until reaching the Arroyo San Lorenzo, without including the lands that are cultivated by the above indicated Indians, and at the west with the sea."

Question. Look at the map and say if you can point out any line upon it which corresponds to the words in the description, "desde este punta tomanda una linea recta pr. la parte del sur hasta llegar al Arroyo de Sn. Lorenzo?"

[Objected to on the same grounds as before.]

Answer. I have looked at the map, and find the line described as the longitudinal line, which goes from the east towards the Arroyo San Lorenzo, to be the one described by the words. This line touches the San Lorenzo creek near the mouth.

DOM'O DANGLADA,
State Translator.

Sworn to and subscribed before me, this 11 March, 1857.

CUTLER McALLISTER,
U. S. Commissioner.

Deposition of J. J. H. Grammont.

UNITED STATES DISTRICT COURT,
Northern District of California.

SAN FRANCISCO, *March 11th*, 1857.

On this day before Cutler McAllister, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came J. J. H. Grammont, a witness produced on behalf of the United States, in case No. 234, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 256 on the docket of the said board of commissioners, and was duly sworn and testified as follows.

Present, Saunders & Hepburn for claimants, and the U. S. dist. att'y.

Questions by the U. S. Dist. Att'y.

J. J. H. Grammont; I am 44 years of age; reside in San Francisco; I am a surveyor by profession; I am tolerably well acquainted with

the Spanish language; I think I am competent to translate the Spanish language; I have examined the document marked "Appendix X Y Z," and find the translation of the Spanish in that document to be, "The limits being on the north side with the Arroyo San Leandro; on the east with the spreadings of the spring of water of the lands that the Indians occupy, who are actually established from this point, taking a straight line on the south side till reaching the Arroyo de San Lorenzo, without including the lands that the indicated Indians cultivate; on the west with the sea."

I have some familiarity with Mexican grants; I have been accustomed to examine them while surveying in Texas.

Question. Look upon the map and say whether you can point out a line corresponding to the description given in the words "from Deste to San Lorenzo inclusive."

[Objected to as before.]

Answer. I have examined the map and find the line marked longitud running from the intersection of a line marked on the map "Linea divisoria en latitud," and from the intersection of said lines to a point at or near the mouth of a creek called Arroyo de San Lorenzo, corresponds with the words above mentioned.

Cross-examination.

I am a Canadian by birth, and my native language is French.

J. J. H. GRAMMONT.

Sworn to and subscribed before me this 11th March, 1857.

CUTLER McALLISTER,
U. S. Commissioner.

Deposition of Horace W. Carpentier.

UNITED STATES DISTRICT COURT,
Northern District of California.

SAN FANCISCO, *March 11th*, 1857.

On this day, before Cutler McAllister, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &., &c., came Horace W. Carpentier, a witness produced on behalf of the United States, in case No. 234, being an appeal from the board of commissioners to ascertain and settle private land claims in the State of California, in case No. 256 on the docket of the said board of commissioners, and was duly sworn, and testified as follows. Present, Saunders & Hepburn for claimants, and U. S. dist. att'y.

Questions by U. S. Dist. Att'y.

I reside in the county of Alameda; I have resided there for five years. I am somewhat acquainted with the Spanish language; sufficiently so, I think, to examine a Spanish document and acquaint my-

self with the contents. I have been in the habit of reading Spanish for years; I think I understand it correctly. I have the recollection of the trial of a cause in Martinez in 1852 or 1853, in the 3d district court, in which Franklin M. Kay and William H. Davis were the parties. The case that I refer to came on for trial whilst I was attending court; there being no translator there who was not interested in the case, Mr. Davis requested me to translate a document that was presented by his attorney as evidence in the case; I looked over the document and saw that I understood it except the word "diramaderos," which was a new word to me; Mr. Davis explained it to me, and I was satisfied from my knowledge of cognate words that it was a proper explanation; I adopted it and translated the document to the court; the document purported to be the grant of the ranch of San Leandro, made to José Joaquin Estudillo; it was several years ago, and I charged my memory with it no more than I did of anything else that occurred at the time in which I was not interested, and I cannot speak with entire certainty. I think it purported to be a traced copy, certified by the surveyor general, of the original expediente in the before mentioned grant kept in his office.

This paper that I translated was not signed; it purported to be what I suppose you would call the titulo. This paper was introduced to establish the right of Mr. Davis to the lands in controversy in that suit; this took place in the fall of 1852.

Cross-examination.

As far as my experience goes, the expedientes on file in the surveyor general's office are not signed.

Direct Examination resumed.

I called attention to the fact that the document I translated was not signed. The court excluded it; whereupon Mr. Saunders, who was attorney for Mr. Davis, stated that the original grant was (to the best of my recollection) at Monterey, and that, if he was obliged to produce that, he would have to discontinue, or get a continuance in the suit. Gen'l Chipman finally, who was attorney for Ray, agreed to admit the document in evidence, as if the original had been produced.

In speaking of the matter with Mr. Saunders the other day, he told me the statement made at that trial by him was, "that the original grant was at San Leandro;" and I think he would be more likely to remember than I should.

H. W. CARPENTIER.

Sworn to and subscribed before me this 11th March, 1857.

CUTLER McALLISTER,
U. S. Commissioner.

Deposition of John Anderson.

UNITED STATES DISTRICT COURT,
Northern District of California.

SAN FRANCISCO, *March 11th*, 1857.

On this day, before Cutler McAllister, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came John Anderson, a witness produced on behalf of the United States in case No. 234, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 226 on the docket of the said board of commissioners, and was duly sworn, and testified as follows.

Present, Saunders & Hepburn for claimants, and the U. S. district attorney.

Questions by U. S. Dist. Attorney.

I was engaged for Mr. George Leland and F. Dempsey, in putting up a fence, in the fall of 1852; the fence was run from the public road up toward the mountain, about ¾ of mile to the north, and west of the adobe house near the springs. Messrs. Ward and Davis came down to stop Mr. Dempsey from building the fence.

Question. What took place on both sides at that time, and what was said, and who was there?

[Objected to as statement of third parties, and as being conversation.]

Answer to question. Messrs. Ward and Davis, and I believe one of Mr. Estudillo's sons; Mr. Dempsey told me it was Estudillo's son; another gentleman I didn't know. Mr. Ward said to Mr. Dempsey, "You're building a good fence;" he replied "I am." Mr. Ward said that the "lasso would soon haul it down." Mr. Dempsey said that "the horses were two small." Mr. Ward objected to the putting up of the fence; Mr. Dempsey replied "it is public land, and I am going to farm it." Mr. Dempsey then asked Ward and Davis why they didn't trouble the balance of the settlers, pointing towards the San Lorenzo creek. Mr. Ward said the land what he had settled on did not belong to him; I supposed he meant the land along the creek—he didn't say; I don't know whether he meant it or not—I suppose so. Mr. Ward pointed out, up from the mountain and down towards Cole's house, on the farm. Mr. Ward said, from that spring, pointing to Cole's house, saying his land lie inside of that line. This spring was situated to the northward and westward of the adobe house; where I was building the fence was about a mile and a half from the creek—I think about north from the creek; Cole's house was, I think, a little south of west from where I was building the fence; I think a line drawn from where I was building the fence to Cole's house would strike the San Lorenzo creek near its mouth. Mr. Ward said all the land we could see on the San Leandro side of the fence we were building belonged to him; he claimed part of the land inside the fence also; at that time there were a good many settlers on the banks of the San Lorenzo creek; there were none that I knew of to the north of the line that Ward pointed out, *excepted* Weeks'; Weeks' was a little north of west from

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where we were building the fence; it was down on the bay; the fence remained up one year. J. ANDERSON.

Sworn and subscribed before me this 11th March, 1857.

CUTLER McALLISTER,
U. S. Commissioner.

Ciendo los linderos por la parte del norte con el arroyo de San Leandro, al este con los derramaderos de los ojos de agua de las tierras que ocupan los Indios que actualmente estan establecidos, desde este punta tomando una linea recta pr. la parte del sur hasta llegar al arroyo de Sn. Lorenzo, sin comprehender las tierras que cultivan los Indios indicados y al poniente con el mar.

[*For map see original, page* 219.]

OFFICE OF THE SURVEYOR GENERAL OF THE UNITED STATES FOR CALIFORNIA.

I, John C. Hays, surveyor general of the United States for the State of California, and as such, having in my office and in my charge and custody a portion of the archives of the former Spanish and Mexican territory or department of Upper California, by virtue of the power invested in me by law, do hereby certify that the two preceding and hereunto annexed pages of tracing paper, numbered from one to two inclusive, exhibit a true and accurate copy of the map and part of one of the pages forming a portion of a document now in the files of this office, designated as "Espediente promovido por el ciudadano José Joaquin Estudillo, en pretencio de terreno conocido con el nombre de San Leandro, No. 300."

In testimony whereof, I have hereunto signed my name officially, and caused my seal of office to be affixed at the [SEAL.] city of San Francisco, this fifth day of March, 1857.

JOHN C. HAYS,
U. S. Surveyor General for California.

Extract from the second section of the act of Congress "providing for the survey of public lands in California, and for other purposes," approved March 3d, 1855.

"The Secretary of the Interior is hereby authorized to cause to be prepared for the office of the said surveyor general, (California,) and any copy or extract from the plats, field-notes, and other records and documents on file in his office, when attested as such by the said seal and the signature of the surveyor general, shall, in all judicial matters, have the same force and effect as the original."

Endorsed: Filed March 17th, 1857.

JOHN. A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Deposition of Guillermo Castro.

UNITED STATES DISTRICT COURT,
Northern District of California.

SAN FRANCISCO, *March 13th*, 1857.

On this day, before Cutler McAllister, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came Guillermo Castro, a witness produced on behalf of the United States, in case No. 234, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 256 on the docket of the said board of commissioners, and was duly sworn, and testified as follows, his evidence being interpreted by Robert Simson, a sworn interpreter. Present, Saunders & Hepburn for claimants, and the U. S. dist. att'y.

Questions by U. S. Dist. Att'y.

Questions waived.

I have been examined before in this case; I don't remember on which side. I had many controversies with Estudillo during his lifetime in regard to lands lying adjacent to and on the north side of the San Lorenzo creek. These took place about the year 1840, as near as I can remember. At the same time Estudillo petitioned the governor for those lands. I had made a similar application to the government. At that time Alvarado was governor. I think that neither Estudillo nor myself had a title to those lands when the controversy began. Then a commission was sent by the governor to determine the title of Estudillo. A short time previous to this difficulty between Estudillo and myself, I had obtained a provisional concession from Alvarado for lands in San Leandro until the line of Estudillo should be determined by the government. After the commission had established the line Estudillo got his grant. The quantity granted to Estudillo was a league, more or less, as I have been informed by Alvarado. What I know about Estudillo's southern line is this: I know that the government sent a commission to run the southern line of Estudillo; I don't know how much land was divided off to Estudillo by that line. There was no other line that I know of, except that line that was run by the government commission, dividing the land into two parts. Finally I agreed with Estudillo, after many disputes with him, in regard to how the line should be run. While I was justice of the peace in Contra Costra there was a difficulty between Estudillo and an Indian named Sylvestre. Sylvestre came to me and complained that Estudillo, being intoxicated, had pulled up some of his small trees which he had planted. Sylvestre, at that time, lived in an adobe house that was at that time known as San Lorenzito. As justice of the peace I caused Estudillo to appear before me. He appeared and presented a title, full of blots with blue ink. On that paper it was impossible for me to tell whether there was one or two sitios mentioned in it, on account of the blots.

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This paper was a title of Estudillo's which he presented to me. I think it was the title of the rancho of San Leandro. I think this title was signed by Alvarado. I don't remember whether there were any other signatures on it or not. I cannot tell whether it was the true signature of Alvarado or not; it might be or not. The title-paper was very much blotted, and in place of "un sitio," it had "dos sitios." I am not sure that it was changed; it was much blotted with blue ink. When this difficulty occurred, I sent to Monterey to the archives, and got a copy of Estudillo's title. By this means I ascertained that Estudillo had one league, I myself being interested in the surplus over what was granted to Estudillo. I myself got a grant of the "Sobrante" from Governor Micheltorena afterwards. Micheltorena was governor of California. The whole difficulty was taken before an alcalde in the pueblo of San José. I don't remember whether the alcalde was Pacheco, Fernandez, or Pico; I can't remember which; and I presented that tribunal that blotted document. The alcalde asked me what I wanted to do in the matter. I stated to the judge I wanted him to conclude this matter; that Estudillo was frequently intoxicated, and there was no knowing what Estudillo might do with such a document. The whole matter ended in nothing. The document was given to Estudillo, and nothing more was done about it.

Question. Were the words "dos sitios," or any of the letters used in spelling the words, in different ink from the body of the document?

Answer. The words were exceedingly blotted, and I could not exactly distinguish well whether it was two "sitios" or one "sitio;" whether it was one or two, I cannot say, but it was very much blotted. There were drops of ink on various parts of the document, and one of them was on the top of that word that I could not distinguish whether it was "dos" or "un." Beneath the blot there was a word which appeared to be "dos," but I could not exactly distinguish it. I cannot tell in what kind of ink the word beneath the blot was written. It might be red, or blue, or green, but it was blotted so I could not distinguish, and I could not distinguish whether the word was "un" or "dos." There were other blots on the face of document in other parts of it. At the same time that *that* Estudillo presented this document to me, he said the word was "un sitio;" but seeing the blots, I presented it before the alcalde, as I have stated. The alcalde said it was no matter; it was nothing.

GUILLERMO CASTRO.

Sworn and subscribed before me, this 13 March, 1857.

CUTLER McALLISTER,
U. S. Commissioner.

Endorsed: Filed March 17th, 1857.

JNO. A. MONROE, *Clerk.*
By W. H. CHEVER, *Deputy.*

Deposition of Jno. Parrott.

UNITED STATES DISTRICT COURT,
Northern District of California.

THE UNITED STATES
vs.
JOSE JOAQUIN ESTUDILLO.

SAN FRANCISCO, *March 17th*, 1857.

On this day, before John A. Monroe, a commissioner of the United States for the northern district of California, duly authorized to administer oaths, &c., &c., came John Parrott, a witness produced on behalf of the claimant in case No. 234, being an appeal from the board of commissioners to ascertain and settle the private land claims in the State of California, in case No. 256 on the docket of the said board of commissioners, and was duly sworn and testified as follows.

Present, U. S. dist. att'y and H. P. Hepburn, counsel for claimant.

Question by Counsel for Claimant.

Did you know Joaquin José Estudillo in his lifetime?

Answer. I did. I read a document put in my hands by him in April, '52, purporting to be a title to the rancho of San Leandro. I read the document; it was a document for the title to the lands between San Leandro creek and San Lorenzo, on which he was then living; the paper was, I think, a regular land title, and signed by Alvarado; I have no recollection of its being signed by any one else, but I considered it a perfect title.

[Objected to.]

It called for one league, more or less; when I saw the title there were no marks of interlineation on it whatever; I am positive of this; I was at San Leandro at the time, on a visit, and was conversing with him at the time about his land; he was ill at the time, and said the people were coming and settling on his land, and he went to his drawer and brought out his papers, and said, "Here they are—look at them!" I had an idea of buying a piece of property over there at the time, and this property was recommended to me, to look at; I saw the title merely accidentally, as I have stated; I am acquainted with the Spanish language; to the best of my knowledge and belief the signature to the papers was undoubtedly Alvarado's.

Cross-examined.

The circumstance of seeing the papers occurred in the beginning of April, 1852; I recollect the kind of paper well on which the title was; it was stamp paper, on which Mexican titles were usually written; I do not recollect the date of the stamp; I do not recollect reading anything but the body of the title, but I think there was another paper containing some correspondence, &c., attached to it, but I am not certain; I saw no espediente; I know what an espediente is.

I was at that time, and long before, familiar with the writing of Juan B. Alvarado. I don't know in whose handwriting the body of the document was written. I am positive it was an original document.

There were one or two more signatures on the document, but I do not recollect whose they were. There were no stains nor blots on the title; had there been, it would have attracted my attention. I think the general boundaries were San Leandro creek, San Lorenzo creek, the hills and the bay. I have not seen the title since that time. I saw since one traced copy of the title about six days ago. The signatures seemed to be the same in all respects. Mr. Hepburn had the traced copy when I saw it. Don't recollect how many signatures were on the traced copy. So far as my recollection serves me, the traced copy seemed to have been taken from the original. I recollect the rubrica of Alvarado. The rubrica, I think, was well traced out. I had an idea of purchasing the property, and I paid more attention to the title than I otherwise would have done, and, as far I recollect, it was a perfect title.

Direct resumed.

I do not state positively that the traced copy had signatures; I did not read the whole of it. It was shown to me on the street; I may have read a few words of it, but nothing more—gave it no attention.

Cross-examination resumed.

The paper was in the hands of Mr. Hepburn. I would recognise it again as a traced copy. JOHN PARROTT.

Sworn and subscribed before me this 17th March, 1857.

JNO. A. MONROE, *U. S. Commissioner.*

Deposition of Antonio Pico.

Antonio Maria Pico, sworn, says: I have seen a document relating to the rancho of San Leandro; I do not recollect when I saw it, but I was alcalde at San José in 1844. There was a dispute between Estudillo and Castro as to the land, and that was the cause of my seeing the document. It was a title-deed signed by Alvarado and Jimeno, his secretary, granting to Estudillo that land. I believe the quantity called for was one league, more or less, in San Leandro. I read the grant; had it in my hands. I know the signatures of Alvarado and Jimeno, and their signatures to the grant were genuine. At the time I saw the grant there was something like a blot or abrasion in the grant, but I could recognise the grant as one league, more or less.

Cross-examined.

The controversy I allude to was between Castro and Estudillo, and both of them had had a controversy with the Indians. I cannot state the color of the ink, but I could see through it the word one, and they arranged their affairs and went away. I did not recognise any other word written there, but the document was soiled. I don't recollect if other marks were on the paper, because it was an affair which was promptly despatched. I have not seen the document since.

ANTONIO MA. PICO.

Stipulation Correcting Transcript.

In the District Court of the United States for the northern district of California.

THE UNITED STATES
vs.
JOSE JOAQUIN ESTUDILLO. } No. 234.

On appeal from the decision of the land commissioners of the United States to settle land claims in California, No. 256 of land commission.

The transcript on file in this case in said district court being erroneous in the particulars hereinafter mentioned, in which it differs from the originals of the land commission, now in the custody and possession of the surveyor general of the United States for the State aforesaid, it is stipulated as follows:

First. The date of the grant or final titulo in Spanish, contained in the expediente of the rancho San Leandro, filed in this case, is erroneously indicated to be in the year 1846, instead of 1842, as in the original. It is agreed that the date and year 1842 shall be taken and considered as the date of said grant, according to the said original.

Second. The map or diseño in said expediente of said rancho San Leandro omits the name "Sylvestre," written at the adobe house represented therein. It is stipulated that the annexed traced copy of the original aforesaid be taken as true and a part of said transcript, instead of the copy of the map now in the transcript.

Third. The translation (of the petition in said expediente) in said transcript has the signature "José Joaquin Ortega," instead of "José Joaquin Estudillo," as in the original. It is stipulated the latter, instead of the former, shall be considered as true in said transcript.

WM. BLANDING, *Dist. Att'y.*
SAUNDERS & HEPBURN,
April 16, 1857. *Claimant's Att'ys.*

(*For map see original, page* 240.)

Endorsed: Filed April 16th, 1857.
JOHN A. MONROE, *Clerk.*
By W. H. CHEVERS, *Deputy.*

Opinion of the Hon. Ogden Hoffman, Judge of the U. S. Dist. Court.

THE UNITED STATES
vs.
JOSE JOAQUIN ESTUDILLO.

This claim was confirmed by the board. It has recently undergone so full an examination in the ejectment suit brought in the circuit court

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that I conceive it unnecessary to consider at length the testimony by which its genuineness is established. On the whole, after an attentive consideration of the additional testimony taken in this court, I incline to the belief that the grant issued as alleged by the claimant, although the non-production of the original grant, and the fact that the order of concession is unsigned, leaves some room for doubt on this point.

It appears to me evident that the grantor intended to fix as the limits of the tract the San Leandro, the sea, and the diramaderos, or overflowings of the springs on the south side the boundary, as designated as a straight line from the diramaderos to the San Lorenzo, but so drawn as not to include the Indian cultivations. This line was, from the terms of the grant, to be a straight line, and should be drawn to the nearest point of the San Lorenzo, to which it can be drawn without including the Indian cultivations. Whether that line will thus take a southerly or southwesterly direction will depend upon the extent of the Indian cultivations. Such has seemed to me, after much consideration, the true construction of the grant and diseño in this case, and such was the view taken of it by the circuit court, and by the board of commissioners. But the difficult question in the case is that presented by the words "poco mas ó menos." It is certainly not easy to say what precise effect they were intended to have. Some operation should clearly be given them, unless they are so hopelessly vague and uncertain as to admit of no definite construction. The grant conveys to the grantee "a part of the land known as the San Leandro," and proceeds to define the boundaries with more than ordinary precision.

The 3d condition states the land of which donation is made, to be one square league, a little more or less, (poco mas ó menos,) directs it to be measured, and reserves the surplus. The quantity of land contained within the boundaries will probably exceed one league by a considerable fraction. Ought, then, the words "poco mas ó menos" be rejected for uncertainty, and the grantee in this and all similar cases to be limited to the precise quantity of one league, no matter how small the gore or strip of land in excess may, on measurement, be found to be; or are we at liberty to construe the words referred to as embracing such fractional part of a league as may be found within the boundaries? The question is one of intention on the part of the grantor. In most instances, the description in these grants was obviously intended to designate the tract out of which the granted quantity was to be taken, rather than to indicate the limits of the land granted.

In some cases, on the other hand, the boundaries are indicated with much precision, and the mention of quantity is obviously rather a conjectural estimate of its extent, than intended as a limitation of the grant to the quantity mentioned; and yet in these cases the Sobrante clause is added apparently from habit, or because no pains were taken to vary the form of the grant according to the circumstances of particular cases.

The English equivalent for the words "un sitio poco mas ó menos" would, perhaps, be given by the phrase "about one square league,"

where under our system a grant specifies the boundaries of the land which it conveys, in absolute terms. The subsequent mention of its extent as of "about one square league," even with a reservation of the surplus, would probably be inoperative. It may plausibly be argued, that if any part of the grant is rejected for uncertainty, the whole phrase (un sitio poco mas ó menos) should be rejected, and not merely the indefinite words which terminate it. Certainly, if the expression were in English, "about one league," the court would hardly strike out the word "about," and construe the words "one league" as indicating that precise quantity, not to be exceeded by a single foot. It has, on the whole, seemed to me that where the grant describes in its granting clause a particular piece of land, with definite or ascertainable boundaries, and the conditions mention the extent of the land so granted, as of "so many leagues, more or less," the latter expression should be so construed as to embrace such additional fractional part of a league as may, on measure, be found within the boundaries. There is certainly some difficulty in determining what quantity shall, by this clause, be deemed to pass. To allow under a grant of one league, more or less, 3 or 4 or 5 leagues to pass, would evidently be unreasonable, unless the condition be rejected in toto. It would seem equally unreasonable to restrict the grantee to the precise quantity of one league, as determined by an accurate survey, and to take from him a gore of land, perhaps a few yards in width, along one side of his rancho, and which is clearly embraced within his boundaries, as mentioned in his grant.

I think the words should be allowed a reasonable operation, and that where the description contained in the grant, the previous proceedings and the circumstances of the case justify the belief that *that* the grantor's general intention was to grant all the land within the boundaries; the words "poco mas ó menos" should be construed to embrace such fractional part of a league as might be found to be in excess of the specified quantity.

The circuit court and the board were of opinion that in the grant under consideration, the excess, such as it was shown to be, passed to the grantee; and in that opinion I concur. A decree must be entered affirming the decision of the board.

Decree of Hon. Ogden Hoffman, judge of the U. S. Dist. Court.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room in the city of San Francisco, on Thursday, the seventh day of May, in the year of our Lord one thousand eight hundred and fifty-seven. Present, the honorable Ogden Hoffman, district judge.

THE UNITED STATES vs. JOSE JOAQUIN ESTUDILLO. } D. C. 234.—L. C. 256.

This cause having been brought to a hearing on appeal from the decision of the board of commissioners for ascertaining and settling pri-

vate land claims in California, on the transcript filed in pursuance of law, and on the pleadings filed in this court, and the additional testimony taken pursuant to its rules, and the same having been argued by the counsel for the respective parties, and due deliberation had in the premises, it is now ordered, adjudged, and decreed, that the decision of the said board be, and the same is hereby, in all things affirmed; and it is further ordered, adjudged, and decreed, that the claim of the appellees is a good and valid claim, and the same is hereby confirmed.

The land of which confirmation is hereby made is situated in Alameda county, and known as *as* a part of the place called San Leandro, and is the same formerly granted to and occupied by José Joaquin Estudillo, deceased, and is bounded and described as follows, viz: Bounded on the north by the arroyo of San Leandro, on the west by the bay ("mar"), on the east by a line drawn from the San Leandro creek, through the places where the waters from the springs on the lands which the Indians established there in 1842 occupied, waste themselves, (diramadores,) and on the south by a straight line from the termination of the line last mentioned at the waters of said springs, drawn to the arroyo of San Lorenzo in such manner as to touch and exclude the lands which said Indians cultivated, and thence by said arroyo to the bay, being the same land granted to said Estudillo; reference for further description to be had to the espediente and map constituting a part of the same, a traced copy of which is on file in this case; and if it shall be found that by running the lines as above mentioned, making a deflection towards the west, at the waters of said springs, the same will not touch any portion of the said cultivated lands of the Indians, then the eastern line of said premises shall be continued southerly in a direct course to said arroyo of San Lorenzo, and without making an angle at said waters.

OGDEN HOFFMAN,
U. S. Dist. Judge.

Endorsed: Filed May 7th, 1857.

JNO. A. MONROE, *Clerk*.
By W. H. CHEVERS, *Deputy*.

Order granting Appeal.

At a stated term of the district court of the United States of America for the northern district of California, held at the court-room, in the city of San Francisco, on Monday, the 27th day of July, in the year of our Lord one thousand eight hundred and fifty-seven. Present the honorable Ogden Hoffman, district judge.

THE UNITED STATES
vs.
JOSE JOAQUIN ESTUDILLO.
} D. C. 234.—L. C. 256.

In this case, on the application of the United States district attorney made in open court, it is ordered by the court that an appeal in behalf of the United States from the final decision of this court rendered in said